

**CALIFORNIA COASTAL COMMISSION**

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# W7b

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Hearing Date: 11/17/2021

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-21-0389

**Applicant:** Pascale and Enrico Marcelli

**Agent:** Moshe Mizrachi

**Location:** 2507 Eastern Canal, Venice, City of Los Angeles Los Angeles County (APN: 4227-013-009)

**Project Description:** After-the-fact approval of construction of 2-story, 25'-2" high, 1,844 sq. ft. single-family home, and addition of an approximately 338 sq.ft. on 2<sup>nd</sup> level resulting in approximately 2,182 sq.ft. single-family home

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The subject site is a canal-front lot located approximately 0.2 miles from the beach in the Venice Canals subarea. The 2,700 square foot lot (30 feet wide and 90 feet deep) is currently developed with a two-story, approximately 25 feet high, 1,884 square foot single-family residence with an attached two-car garage and one unenclosed space in the driveway. The existing home was built in 1978 without the benefit of a coastal development permit. The applicants seek after-the-fact (ATF) approval for the original construction of the home and approval for an addition of approximately 338 square feet to the second story of the existing residence. The approximate 338 square foot addition consists of enclosing portions of two balconies, bringing the floor area to a total of approximately 2,182 square feet. To note, the plans calculate a total of 338 square feet

of new floor area but the overall addition, as depicted on the plans, add up to 328 square feet.

The neighborhood consists of primarily two and three-story single-family and multi-family residential structures that range between 808 and 3,228 square feet. Therefore, the proposed development is compatible with the existing community character and is not anticipated to have an adverse cumulative effect on surrounding development.

Staff is recommending the Commission **approve** the coastal development permit application with 10 special conditions, including: **1)** development setback and building height; **2)** permeable yard area; **3)** permit compliance; **4)** assumption of risk; **5)** no future shoreline protective device **6)** drought tolerant, non-invasive plants; **7)** construction best management practices, and drainage and run-off control practices; **8)** parking and residential density; **9)** local government approval; **10)** deed restriction; and **11)** bird strike prevention. Therefore, the Commission finds that, as conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect of the proposed project, there are no remaining significant environmental impacts within the meaning of CEQA, and the project is consistent with CEQA and the policies of the Coastal Act.

These conditions are imposed to ensure that all biological resources and water quality are protected for the life of the project, and risks to life and property from flood hazards are minimized. The proposed project, only as conditioned, can be found consistent with Chapter 3 of the Coastal Act.

The standard of review is the Chapter 3 policies of the Coastal Act, with the certified LUP used as guidance.

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### **EXHIBITS**

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all of the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicants or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicants to bind

all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

- 1. Development Setbacks and Building Height.** No development is authorized within ten feet of the fronting canal property line (Eastern Canal) nor within or above the required 450 square foot permeable front yard area, except as described in Special Condition 2 below. At a point ten feet landward of the fronting canal property line, the maximum height of any structure shall not exceed 22 feet above the centerline of the rear alley (Eastern Court). Beyond ten horizontal feet from the fronting canal property line, one foot in additional height is permitted for each two additional horizontal feet to a maximum height of thirty feet (30') except for chimneys, ducts, and other accessory structures which are limited to 35 feet. Roof deck railings shall not exceed 42 inches above the thirty-foot height limit. Building height is measured from the elevation of the adjacent road or alley. A one-hundred square foot (maximum) roof access structure no higher than 10 feet above the thirty-foot roof height limit is permitted and must be setback at least 60 feet from the fronting canal property line.
- 2. Permeable Yard Area.** In order to maintain an open and visible access corridor, to enhance visual quality, and to preserve the water quality and biological productivity of the canals, an uncovered and permeable yard area totaling no less than fifteen times the width of the site (in this case: 15' x 30'= 450 square feet) shall be maintained on the project site in the front yard area between the structure and the front (Eastern Canal) property line. Uncovered means that no fill or building extensions (i.e. chimneys, balconies, stairs, trellises) shall be placed in or over the permeable yard area with the exception of fences or garden walls (not to exceed 42 inches in height), permeable decks at grade (not to exceed 18 inches in height), and an underground cistern or French drain for water retention. The permeable yard area may include minimal coverage with impermeable pavers, stones, concrete walkways or other similar ground cover, but in no event shall impermeable materials occupy more than fifteen percent (15%) of the total amount of the required permeable yard area. PRIOR TO THE ISSUANCE OF THE NOTICE OF INTENT TO ISSUE PERMIT, the applicant shall provide an exhibit prepared by a licensed surveyor that depicts the precise boundaries of the area that must remain uncovered and permeable and shall be described and depicted in accordance with Page 1 of Exhibit 2 dated February 20, 2020 and shall be attached to the Notice of Intent to Issue Permit that the Executive Director issues for this permit.
- 3. Permit Compliance.** The permittee shall undertake and maintain the development in conformance with the special conditions of the permit and the final plans. Any proposed changes to the approved plans shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans shall occur without a Commission-

approved permit amendment unless the Executive Director determines that no permit amendment is required.

- 4. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant(s) acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding and sea level rise; (ii) to assume the risks to the applicant(s) and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**5. No Future Shoreline Protective Device.**

- A. By acceptance of this permit, the permittee agrees, on behalf of itself and all other successors and assigns, that the project is new development for which there is no right to shoreline protection and hereby waives on behalf of itself, and all other successors and assigns, any rights that may exist under applicable law to construct a shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. 5-21-0389, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural coastal hazards in the future.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) is required to remove the development authorized by this permit, including the residence and yard improvements if any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices.
- C. In the event that portions of the development fall to the public walkway and/or water before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the public walkway and/or water and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, including the Venice Canals.

**6. Landscaping – Drought Tolerant, Non-Invasive Plants.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the

applicants shall submit, in a form and content acceptable to the Executive Director, two (2) full sized sets of final landscaping plans, which shall include and be consistent with the following:

- i. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be **low water use** plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
- ii. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## 7. Water Quality.

### A. Construction Responsibilities and Debris Removal

- i. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
- ii. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- iii. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- iv. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- v. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- vi. The applicant(s) shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;

- vii. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
  - viii. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
  - ix. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
  - x. The discharge of any hazardous materials into any receiving waters shall be prohibited;
  - xi. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
  - xii. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity;
  - xiii. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- B. Drainage and Water Quality
- i. During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into any canal or street that drains into a canal, unless specifically authorized by the California Regional Water Quality Control Board;
  - ii. All equipment and materials shall be stored and managed in a manner to minimize the potential of pollutants to enter the canals;
  - iii. A French drain, underground cistern, or other similar drainage systems that collect and reduce the amount of runoff that leaves the site shall be installed and maintained on the project site;
  - iv. All runoff leaving the site shall be directed away from the canals and into the City storm drain system;
  - v. No water from any pool or spa shall be discharged into any canal or street that drains into a canal.

**8. Parking and Residential Density.** The permitted use of the approved structure is a single-family residence. A minimum of three (3) parking spaces shall be provided and maintained on the site as proposed: two spaces in the garage and an area for parking a third vehicle on the driveway in the rear setback area. Any proposed change in the number of residential units, change in number of on-site parking



spaces, or change in use shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations.

- 9. Local Government Approval.** The proposed development is subject to the review and approval of the City of Los Angeles (City). This action has no effect on conditions imposed by the City pursuant to an authority other than the Coastal Act. In the event of conflict between the terms and conditions imposed by the City and those of this coastal development permit, the terms and conditions of Coastal Development Permit 5-21-0389 shall prevail.
- 10. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant(s) shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
- 11. Bird Strike Prevention.** Glass railings on decks and balconies shall use materials designed to minimize bird-strikes. Such materials may consist, all or in part, of frosted or partially-frosted glass, or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless they contain UV-reflective glazing that is visible to birds or appliqué (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliqué used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqué. All materials and appliqué shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION AND DESCRIPTION

The subject site is a canal-front lot located approximately 0.2 miles from the beach in the Venice Canals subarea of the City of Los Angeles (**Exhibit 1**). The site is zoned RW1-1-O by the City zoning code and designated Single Family Residential – Low Medium Density I in the certified Venice LUP. The 2,700 square foot lot (30 feet wide and 90 feet deep) is currently developed with a two-story, approximately 25 feet high, 1,884 square foot single-family residence with an attached two-car garage and one unenclosed space in the driveway that is accessed from Eastern Court, the rear alley.

The proposed project obtained a local Coastal Development Permit (CDP) issued by the City's Planning Department (Case No. DIR-2020-2172-CDP) for the 338 square foot addition. No appeal of the local action was filed. On May 28, 2021 the applicant submitted the required "dual" Coastal Commission CDP application (Application No. 5-21-0389) for Commission review and action.

The existing home was built in 1978 without the benefit of a coastal development permit. The applicants seek approval for the after-the-fact (ATF) development for the original construction of the home and an addition of approximately 338 square feet to the second story of the existing residence. The approximately 338 square foot addition consists of enclosing portions of two balconies, bringing the floor area to a total of approximately 2,182 square feet (**Exhibit 2**). To note, the plans calculate a total of 338 square feet of new floor area but the overall addition, as depicted on the plans, add up to 328 square feet.

The existing residence provides a 16-foot front yard setback and a 480 square foot permeable yard area in conformance with the Venice LUP, which requires that canal fronting homes maintain a permeable yard area between the canal and the home. **Special Condition 2** requires that a minimum of 15 feet from the canal side property line to the structure, and a minimum total of 450 square feet of permeable yard area be maintained. **Special condition 2** also requires that the applicant provide an exhibit prepared by a licensed surveyor that depicts the precise boundaries of the permeable yard area that must remain uncovered and permeable.

Due to limited on-street parking, the LUP requires single-family residences to provide three parking spaces in the Venice Canals subarea, and three on-site parking spaces are provided – two in the garage and one on the driveway apron, all accessed from the rear alley, Eastern Court. Provision of such onsite parking will ensure that the development does not cause the use of street parking that would displace public parking spaces used for coastal access and therefore this parking requirement is imposed through **Special Condition 8** and **Special Condition 3** requires that any deviation from the approved plans must be submitted for review by the Executive Director.

In addition, Venice LUP Policy I.A.4 limits this site to a height of 22 feet for any portion of the home within 10 feet from the canal property line. Thereafter, an ascending height equal to one half the horizontal depth from this 10-foot line with a maximum height of 30 feet. The single-family residence reaches a maximum height of 25 feet 2-inches consistent with the ascending height restriction as outlined in the LUP policy. The applicant proposes to enclose approximately 68 square feet of a canal-fronting balcony on the second floor. As such, the proposed addition must comply with the height limitations set forth in the LUP. The proposed 68 square foot addition will maintain a 16-foot setback from the canal property line and will reach a height of approximately 20 feet. Therefore, the addition will remain within the height limits outlined in the LUP. The applicant also proposes to enclose approximately 260 square feet of the alley-fronting balcony and will reach a height of approximately 22 feet. This addition will also remain within the maximum height limit. **Special Condition 1** reflects the requirements for height limits.

The existing residence along with the proposed second-story addition is visually compatible with the surrounding area. The neighborhood consists of primarily two and three-story single-family and multi-family residential structures that range between 808 and 3,228 square feet. The existing residence complies with the thirty-foot height limit and the front yard setback for all development in the Venice Canals subarea. Therefore, the proposed development is compatible with the existing community character and is not anticipated to have an adverse cumulative effect on surrounding development. In addition, the proposed development will not adversely impact coastal resources, public access, or public recreation opportunities, and is consistent with past Commission actions in the area and Chapter 3 policies of the Coastal Act.

The proposed development is located within the tidally influenced Venice canal system, which is mechanically controlled via a tide gate system, which is hydrologically connected to Ballona Lagoon by the Grand Canal. There are two sets of tide gates: tide gates located under the Washington Street Bridge at Grand Canal, which connect to the Venice Canals, and tide gates located at the southern end of Ballona Lagoon. These tide gates limit the potential for flooding and regulate tidal flushing (with seawater) in the Ballona Lagoon, Grand Canal, and Venice Canals. However, based on the City's Venice Sea Level Rise Vulnerability Assessment prepared by Moffat & Nichol (May 2018), the communities within the Venice Canals area are low-lying and flood prone under existing conditions. The tide gates are typically closed prior to higher-high tide events to prevent the water levels in the canal to rise. As sea levels rise, the tide gates may remain closed for longer periods (which would prevent accumulated stormwater from flushing out to sea), and as storm events become more extreme, flooding may become more frequent.

According to the Our Coast Our Future (OCOF) hazards map, the subject site is one of approximately 4,000 parcels, including the surrounding walk streets and canal bridges, which are anticipated to flood particularly from exceedances of stormwater capacity and/or tide gate malfunction. The OCOF model indicates the project site is especially flood-prone with 2.5 feet of sea level rise and will be subject to non-storm coastal flooding with 6.6 feet of sea level rise. A rise in sea level of 6.6 feet is projected to occur

between 2090 and 2100 which is after the anticipated 75-year lifespan of the proposed development. Projecting sea level rise at any one location is not an exact science, and coastal areas are inherently unpredictable, especially when making predictions about conditions in 75 to 100 years. Given the risks and vulnerabilities the site faces regarding potential flood hazards, **Special Conditions 4 and 5** require the applicant to assume the risks of pursuing development in a hazardous area, waive the applicant's right to install shoreline protective devices, and remove the development if deemed unsafe by a government entity.

Due to the site's proximity to the canals, **Special Condition 7** requires construction-related requirements and best management practices to ensure pollution of the canal is prevented. Based on the project plans, stormwater runoff will be diverted to Ocean Court, away from the canal. **Special Condition 6** requires the applicant to utilize only drought tolerant, low water use, non-invasive plant species and water conservative irrigation systems for any new landscaping.

**Special Condition 9** requires the applicant to comply with local government requirements but clarifies that in the event of conflict between the terms and conditions imposed by the City and those of this coastal development permit, the terms and conditions of this permit (CDP No. 5-21-0389) shall prevail.

**Special Condition 10** requires the applicant to record a Deed Restriction acknowledging that, pursuant to this permit (CDP No. 5-21-0389), the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

Glass railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these glass walls causing their death or stunning them, which exposes them to predation. To ensure bird strike prevention, **Special Condition 11** requires that the applicant to use a material for the glass railing that is designed to prevent creation of a bird strike hazard.

## **B. DEVELOPMENT**

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. The project provides adequate parking based on the Commission's typically applied standards. Therefore, as proposed, the development conforms with Sections 30250, 30251, and 30252 of the Coastal Act.

## **C. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed, and

conditioned, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **D. BIOLOGICAL RESOURCES & WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, and the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### **E. HAZARDS**

Development adjacent to the ocean is inherently hazardous. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

#### **F. COASTAL ACT VIOLATION**

A violation of the Coastal Act has occurred on the project site, including but not necessarily limited to construction of the residence in 1978 without benefit of the necessary coastal development permit. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the violation described in this section. Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violation (or any other violations).

## G. LOCAL COASTAL PROGRAM (LCP)

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (LCP), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for Venice was effectively certified on June 14, 2001. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

## H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). The findings above are incorporated herein by reference.

Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. As a certified regulatory program, Section 21080.5(d)(2)(A) of CEQA still applies to the Commission's CDP regulatory process and prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Los Angeles is the lead agency for purposes of CEQA. As noted on the City's staff report dated January 22, 2020, the City determined that the proposed development was categorically exempt from CEQA requirements pursuant to CEQA Guidelines Sections 15301(Class 1) and 15303 (Class 3).

The development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Special Conditions imposed will mitigate adverse impacts to coastal resources and public access. The **Special Conditions** address the following issues: **1)** development setback and building height; **2)** permeable yard area; **3)** permit compliance; **4)** assumption of risk; **5)** no future shoreline protective device **6)** drought tolerant, non-invasive plants; **7)** construction best management practices, and drainage and run-off control practices; **8)** parking and residential density; **9)** local government approval; **10)** deed restriction; and **11)** bird strike prevention. Therefore, the Commission finds that, as conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect of the proposed project, there are no remaining significant environmental impacts within the meaning of CEQA, and the project is consistent with CEQA and the policies of the Coastal Act.

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

1. City of Venice certified Land Use Plan
2. City of Los Angeles local Coastal Development Permit Case No. DIR-2020-2172-CDP dated January 5, 2021.