

CALIFORNIA COASTAL COMMISSION

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Th12a

ADDENDUM

March 9, 2021

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM TH12a, APPEAL NO. A-5-VEN-21-0010 (MILES, XINGYUN, LLC) FOR THE COMMISSION MEETING OF THURSDAY, MARCH 11, 2021.**

Response to Correspondence

On March 4, 2021, the Commission received one letter of support of Staff's No Substantial Issue recommendation, from Citizens Preserving Venice. The letter asserts that the West Los Angeles Planning Commission's (Planning Commission) decision denying the coastal development permit application at issue in Appeal No. A-5-VEN-21-0010 is consistent with the Coastal Act and the certified Land Use Plan for Venice and that overturning the City's decision would set an "unacceptable precedent." This aspect of the comment letter supports the staff recommendation and does not require a response.

The letter also asserts that the City's decision cannot be appealed to the Commission under Section 13319 of the Commission's regulations. Commission staff has the following response to this point in the letter.

Section 13319 of the Commission's regulations states:

Where a local government approves a development on the basis of local land use regulations but denies the issuance of a coastal development permit because it cannot make the findings required by section 13311, the applicant may appeal such denial of the coastal development permit in the manner provided in Section 13318. In addition, such appeal shall be valid only if the local government approvals fulfill the preliminary local approval requirements of Sections 13052 or 13053. An appeal from a local government denial on the basis of local land use regulations shall not be valid.

Section 13319 allows an applicant to appeal a denial of a CDP where the local government approves a development on the basis of local land use regulations but denies the issuance of a coastal development permit. The purpose of the regulation is to limit appeals by applicants to situations where the applicant's project could move forward but for the lack of a coastal development permit.

The Planning Commission originally issued a Letter of Determination on October 1, 2020, in which the Planning Commission disapproved the project, disapproved the Mello Act Compliance Review, and did not grant required environmental clearance under CEQA. The applicant filed a timely appeal on November 2, 2020. On November 5, 2020, Coastal Commission staff issued a letter to the applicant informing them that the appeal was invalid because the required preliminary local approvals were not fulfilled as outlined in Section 13052 of the Commission's regulations, and the appeal was rejected.

The Planning Commission issued a corrected Letter of Determination on December 10, 2020, which revised its decision to state that the appeal was granted, a coastal development permit was denied, and the Planning Commission "took no action" on the Planning Director's Mello Act Compliance Review. The findings adopted by the Planning Commission explained that the Planning Director had issued a Mello Act Compliance Determination, dated April 22, 2020, and that the Planning Commission had considered an appeal of the Mello Act Compliance Review. However, the Planning Commission's "denial of the project on other grounds (Coastal Development Permit application) results in no development and authorizes no demolition or conversion of existing residential dwelling units" and that "no additional Findings are required for Mello Act Compliance Review." Based on the corrected Letter of Determination, Commission staff opened a new appeal period. The applicant appealed again on January 12, 2021.

Although lack of clarity in the City's findings and decision documents made it difficult to apply Section 13319 to the current appeal, on balance staff accepted the appeal after concluding that the appeal is valid under the Commission's regulations. The Planning Commission's findings related to the Planning Director's Mello Act Compliance Determination indicated that the Planning Commission did not overturn that aspect of the Planning Director's decision, and the Planning Commission's Letter of Determination states that the Commission "took no action" on the Mello Act Compliance Review. Citizens Preserving Venice interprets the actions of the Planning Commission at the hearing differently and asserts that the Mello Act Compliance Review was overturned by the Planning Commission. However, given ambiguities in the City's appeal process and the Planning Commission's various decision documents and findings, Commission staff believes the safer approach in this case, based on the unique circumstances presented by the City's decision on this project, was to accept the appeal because the Planning Director's decision approving a Mello Act Compliance Review for the project arguably had not been overturned; therefore, the project had received at least some approval at the local level.¹ Given the Coastal Act's broad emphasis on public participation, Commission staff's filing of the appeal to allow the Commission to determine whether it raises a substantial issue as to conformity with Chapter 3 of the Coastal Act was reasonable.

¹ In addition, Section 13053 authorizes the Commission Executive Director to waive preliminary approvals for projects for "good cause."