

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal Number: A-5-PPL-21-0037

Applicant: California Food Managers, LLC and Heavenly Tigers, LLC (Attn: Michael Aminpour)

Agent: Michael Gonzalez, Gaines & Stacey LLP (Attn: Alicia B. Bartley, Esq.)

Local Government: City of Los Angeles

Local Decision: Approval with Conditions

Appellants: Pacific Palisades Residents Association, Inc. and Edgewater Towers Condominium Homeowners Association (Attn: Thomas M. Donovan)

Project Location: 17346 W. Sunset Boulevard, Pacific Palisades, City of Los Angeles, Los Angeles County (APN: 4415-018-018)

Project Description: Appeal of City of Los Angeles Local Coastal Development Permit No. CPC-2018-504-DB-DRB-SPP-CDP-MEL-1A approved with conditions for demolition of existing 1,860 sq. ft. vacant fast food restaurant, 11,500 cu. yds. of grading (11,500 cu. yds. of cut and 800 cu. yds. of recompaction), installation of a 38-ft.-tall new retaining wall, and construction of a 5-story (plus subterranean garage), 60-ft.-9-in.-tall, 32,225 sq. ft., mixed-use building with 39 dwelling units (4 restricted Very Low Income and 4 restricted Moderate Income), 2,900 sq. ft. of ground floor commercial uses, and 49 parking spaces.

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE: This is the “substantial issue” phase of the appeal hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, appellant(s), persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

On March 24, 2021, the City of Los Angeles took action on Local Coastal Development Permit (CDP) No. CPC-2018-504-DB-DRB-SPP-CDP-MEL-1A, which approved with conditions the demolition of an existing 1,860 sq. ft. vacant fast food restaurant, 11,500 cu. yds. of grading, installation of a 38-ft.-tall retaining wall, and construction of a 5-story (plus subterranean garage), 60-ft.-9-in.-tall, 32,225 sq. ft., mixed-use building with 39 residential units (4 restricted Very Low Income and 4 restricted Moderate Income), 2,900 sq. ft. of ground floor commercial uses, and 49 automobile parking spaces.

The project site is a 14,963 sq. ft. hillside lot located within a commercial corridor adjacent to commercial and residential uses along Sunset Boulevard and Pacific Coast Highway in Pacific Palisades. The site is in the City of Los Angeles “Single Permit Jurisdiction” Area, and the standard of review is Chapter 3 of the Coastal Act.

A local appeal was filed by Pacific Palisades Residents Association, Inc. and Edgewater Towers Condominium Homeowners, and the City’s Planning and Land Use Management Committee and City Council denied the appeal on March 24, 2021. The City’s Notice of Final Local Action was received by the Commission’s South Coast office on April 29, 2021 and one appeal prepared by the same appellants, Pacific Palisades Residents Association, Inc. and Edgewater Towers Condominium Homeowners Association, was filed on May 21, 2021. The applicant waived the deadline for Commission action on the appeal.

The appellants generally contend that the City-approved project is not consistent with Chapter 3 of the Coastal Act because: **1)** the mass and scale of the project is incompatible with the character of the surrounding area and would set an adverse precedent that could result in cumulative impacts to visual resources (Section 30251); **2)** the City’s approval prioritizes residential uses over visitor-serving commercial and coastal recreational uses, which could also set an adverse precedent for new development along the coast (Section 30222); and **3)** the City did not provide sufficient evidence that the project is designed to minimize geologic hazards and assure stability and structural integrity without requiring protective devices that would substantially alter natural landforms (Section 30253).

In terms of the contention that the project is not compatible with the community character and visual appearance of the surrounding neighborhood, the City found that the

surrounding area, including the Sunset Boulevard corridor, is developed with commercial and residential structures ranging from one to eight stories in height. With other commercial development extending up to three stories and residential development extending up to eight stories, and the City's allowance of additional height, the City found that the proposed five-story development is visually compatible with the surrounding area. Additionally, the City waived applicable height and floor area ratio standards in accordance with the State's Density Bonus Law as incentives for providing affordable housing. The project's utilization of the State's Density Bonus Law is not part of the Commission's review; rather, the standard of review remains the proposed project's consistency with the resource protection policies of the Coastal Act. The proposed project would result in the net gain of residential density and affordable rental units at the site and is not anticipated to cumulatively affect the commercial and multi-family residential character of the neighborhood, and the project design ensures visual compatibility with the surrounding area in conformance with Chapter 3 of the Coastal Act. Thus, staff believes that no substantial issue exists as to the project's conformance with the visual resource policies of the Coastal Act.

As for the contention that the project prioritizes residential uses over visitor-serving commercial and coastal recreational uses, the City-approved project provides for commercial, as well as residential use onsite, including affordable housing units. The project will concentrate development in areas able to accommodate it and provide housing in the coastal zone for lower income individuals and families, which will not adversely affect public access to the coast. Because the development will be consistent with the prioritization of land uses in Chapter 3 of the Coastal Act, staff believes this contention does not support a substantial issue finding.

Finally, the appellants are concerned that the City incorrectly found that the project would be consistent with Section 30253 of the Coastal Act based on outdated and inaccurate geologic information. The City's approval relies on several geotechnical reports, foundation plans, and a slope stability analysis to conclude that the new development assures stability and structural integrity in areas of geologic hazard consistent with the requirements of the Coastal Act. The City's action also addresses the geologic issues through conditions of approval that include requirements that project elements be supported on foundations that extend into bedrock, grading be overseen by a City soil engineer, and site drainage avoid the slope. The findings are based on current geotechnical information, and, thus, staff believes the City properly concluded that compliance with the conditions will minimize risk to life and property and will ensure that the project will not create nor contribute significantly to erosion, geologic instability, or destruction of the site consistent with Coastal Act Section 30253.

Thus, considering the factors for substantial issue in Section 13115(b) of the Commission's regulations, staff believes the appeal does not raise a substantial issue regarding the City-approved development's consistency with Chapter 3 policies of the Coastal Act.

Therefore, staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which the appeal has been filed. The motion and resolution to carry out the staff recommendation is on Page 5.

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EXHIBITS

[Exhibit 1](#) – Vicinity Map

[Exhibit 2](#) – City Approved Plans

[Exhibit 3](#) – City Determination Letter

[Exhibit 4](#) – Appeal

[Exhibit 5](#) – Applicant’s Proposed Tribal Cultural Resource Mitigation Measures

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-PPL-21-0037 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act.

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution: The Commission hereby finds that Appeal No. A-5-PPL-21-0037 presents **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On May 21, 2021, within 20-working days of receipt of notice of final local action, an appeal was filed by Pacific Palisades Residents Association, Inc. and Edgewater Towers Condominium Homeowners Association ([Exhibit 4](#)). The appellants generally raise the following concerns with the City-approved development:

- 1) The project is not visually compatible with the mass, scale, and character of the surrounding neighborhood and could result in adverse cumulative impacts to visual resources.
- 2) The project would prioritize residential uses over visitor-serving commercial and coastal recreational uses.
- 3) The City did not provide sufficient evidence that the project is designed to minimize geologic hazards and assure stability and structural integrity without requiring protective devices that would substantially alter natural landforms. The City incorrectly found that the project would be consistent with Section 30253 of the Coastal Act based on outdated and inaccurate geologic information.

The appellants also raised issues with the project's consistency with uncertified community plans, guidelines, and the State's Density Bonus Law. However, as described in more detail in Sections IV and V of this report, the standard of review for this appeal is the Chapter 3 policies of the Coastal Act. Thus, these contentions are not grounds for appeal. The issues raised regarding geologic issues, landform alteration, visual resources, community character, priority uses in the coastal zone, and cumulative impacts on coastal resources are.

III. LOCAL GOVERNMENT ACTION

The City Planning Commission held a public hearing for CDP No. CPC-2018-504-DB-DRB-SPP-CDP-MEL on August 27, 2020. On September 15, 2020, a determination letter was issued for approval of the local CDP ([Exhibit 3](#)). One local appeal was filed by Edgewater Towers Condominium Association and Pacific Palisades Residents Association Inc. on September 28, 2020. On February 16, 2021, the City of Los Angeles Planning and Land Use Management Committee held a public hearing and recommended denial of the appeal. The City Council then acted on March 24, 2021 to deny the appeal and approve the local CDP with conditions, adopt the Mitigated Negative Declaration No. ENV-2018-505-MND, approve a density bonus, approve two “off-menu” incentives to increase the permitted height from 30 ft. to 60-ft.-9-in. and floor area ratio (FAR) from 1:1 to 2.15:1, approve the project pursuant to the Pacific Palisades Commercial Village and Neighborhoods Specific Plan, approve Mello Act compliance, and adopt the conditions and findings for the subject development project.

The City’s Notice of Final Local Action (NOFA) for the local CDP was received in the Coastal Commission’s Long Beach Office on March 30, 2021. The Commission determined that the notice was deficient and sent a letter to the City on April 12, 2021. The City addressed the deficiencies, and the revised NOFA was received on April 29, 2021. Subsequently, the Coastal Commission’s required twenty working-day appeal period was established. On May 21, 2021, within the Commission’s appeal period, the appeal was received from the appellants ([Exhibit 4](#)). No other appeals were received prior to the end of the appeal period on May 27, 2021.

IV. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local CDPs. Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued CDPs. Section 30602 of the Coastal Act allows any action by a local government on a CDP application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act. [Cal. Pub. Res. Code §§ 30200 and 30604.]

After issuance of a local CDP, the City must provide notice of its decision to the Coastal Commission within five working days. Unless the local government provides such notification to the commission, the permit issued by the local government shall be of no force and effect. [Section 13315 of Title 14 of the California Code of Regulations.] After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the City decision to the Coastal Commission. [Cal. Pub. Res. Code § 30602.] As provided under Section 13318 of

Title 14 of the California Code of Regulations, the appellant must comply with the procedures for filing an appeal as required under Section 13111 of Title 14 of the California Code of Regulations, including the specific grounds for appeal and a summary of the significant question raised by the appeal.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Commission staff recommends a finding of **no substantial issue**. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the “substantial issue” question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issue and that the Commission will therefore not review the CDP de novo. If the Commission determines that no substantial issue exists, then the local government’s CDP action will be considered final.

Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act, the Commission typically continues the public hearing to a later date in order to review the CDP as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.] Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations. A de novo public hearing on the merits of the application uses the Chapter 3 policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Those who are qualified to provide spoken testimony at the substantial issue phase of the hearing as provided by Section 13117 of Title 14 of the California Code of Regulation, will typically have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, appellants, persons who opposed the application before the local government, and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V. SINGLE PERMIT JURISDICTION AREA

Within the areas specified in Coastal Act Section 30601, which is known in the City of Los Angeles permit program as the Dual Permit Jurisdiction area, the Coastal Act requires that any development which receives a local CDP permit also obtain a second (or “dual”) CDP from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (i.e., projects in the Single Permit Jurisdiction), the City of Los Angeles local CDP is the only CDP required. The subject project site on appeal herein is located within the Single Permit Jurisdiction area. The Commission's standard of review for the appeal is the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The project site is an approximately 14,963 square foot (sq. ft.) hillside lot located in Pacific Palisades approximately 800 feet (ft.) from the inland extent of the nearest beach. The site is in an urbanized area, in a commercial corridor, and adjacent to commercial and residential uses along Sunset Boulevard and Pacific Coast Highway (PCH) ([Exhibit 1](#)). The subject lot is designated Neighborhood Office Commercial by the City of Los Angeles uncertified General Plan and C2-1VL by the City’s uncertified Zoning Code. The project will be located at the bottom of a steep slope that is not located in a landslide area; however, the site, like many areas within the Los Angeles County coastal zone, is prone to seismic activity and liquefaction. The project site is within the City of Los Angeles “Single Permit Jurisdiction” area. The project site is currently developed with commercial uses, including a vacant fast food restaurant with an associated parking lot and a retaining wall.

On March 24, 2021, the City of Los Angeles took action on Local Coastal Development Permit (CDP) No. CPC-2018-504-DB-DRB-SPP-CDP-MEL-1A, which approved with conditions the demolition of an existing 1,860 sq. ft. vacant fast food restaurant, 11,500 cubic yards (cu. yds.) of grading (11,500 cu. yds. of cut and 800 cu. yds. of recompaction), installation of a 38-ft.-tall new retaining wall, and construction of a 5-story (plus subterranean garage), 60-ft.-9-in.-tall, 32,225 sq. ft., mixed-use building with 39 dwelling units (four restricted for Very Low Income individuals or families and four restricted for Moderate Income individuals or families), 2,900 sq. ft. of ground floor commercial uses, and 49 automobile parking spaces ([Exhibit 2](#)). The proposed building will observe setback requirements of the uncertified Zoning Code. As it relates to local parking requirements, the project will include a total of 49 vehicle parking spaces and 69 bicycle parking spaces provided in a subterranean level, at-grade, and in one above-grade level, and will comply with the off-street parking requirements of the uncertified Zoning Code. The subject site fronts Sunset Boulevard and is an interior lot landward of the first public road with no secondary public right of way along the rear or side of the parcel; the project will maintain an existing driveway and close an existing driveway, thus creating additional on-street parking.

Project Background

Density Bonus

According to the City’s findings, the proposed project incorporates a proportion of affordable housing units that makes the project eligible for the State’s Density Bonus Law (Government Code § 65915). The City also found that the applicant is entitled to multiple incentives/concessions. The concessions granted per the State’s Density Bonus Law were related to certain applicable height and floor area ratio standards, and the City granted waivers for these standards.

More specifically, the City’s approval includes a 25% density bonus and two “off-menu” incentives to increase the permitted height from 30 ft. to 60-ft.-9-in. and floor area ratio

(FAR) from 1:1 to 2.15:1. Without the height incentive, to allow a building height of 60-feet, 9-inches, the applicant would be physically precluded from constructing the third, fourth and fifth levels of the project. The incentive to increase the FAR to 2.15:1 would allow an increase of 11,737 sq. ft., which would accommodate approximately 22 additional dwelling units, as provided on the proposed fourth and fifth levels. The City-approved increased height and FAR will result in a building design that provides cost reductions for affordable housing. The approved waiver will allow the developer to expand the building envelope so the additional and affordable units can be constructed, and the overall space dedicated to residential uses is increased.

However, the project's utilization of the State's Density Bonus Law is not part of the Commission's review; rather, the standard of review remains the proposed project's consistency with the resource protection policies of the Coastal Act.

Tribal Cultural Resources

The project site is located near the Native American settlement of Topaa'nga (Topanga), which is considered sacred to numerous Tribes with territorial, ancestral, and/or cultural ties to the area, and is still used for ceremonial and cultural activities. Thus, the project area is a tribal cultural resource and additionally has the potential to contain other tribal cultural resources subsurface. According to the applicant's prepared Mitigated Negative Declaration (MND), there is moderate potential for inadvertent discovery of archaeological, tribal cultural, or paleontological resources during project implementation. The applicant's consultant, SWCA Environmental Consultants, states that the subject area has been subject to past archaeological investigation, and a review of archival records conducted for the general project site identified the area as being located near natural resources that may have provided important resources to prehistoric and protohistoric populations, but no archaeological, tribal cultural, or paleontological resources were observed or recorded during the survey.

Coastal Act Section 30244 states that "Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required." Additionally, the Commission's Tribal Consultation Policy (adopted on August 8, 2018)¹ recognizes the importance of State efforts to protect Tribal Cultural Resources and improve communication and coordination with Tribes, and it sets out a tribal consultation process that is fully consistent with, and complementary to the nature of, the Commission's goals, policies (including Section 30244), and mission statement. Tribal Cultural Resources can be sites, features, cultural landscapes, sacred places, and objects with cultural value and can also qualify as archaeological, paleontological, visual, biological, or other resources that the Commission is tasked with protecting pursuant to the Coastal Act.

Before the local coastal development permit application, the applicant and the City coordinated with culturally affiliated and/or affected Native American Tribes to fulfill AB 52

¹ <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-Tribal-Consultation-Policy.pdf>

and CEQA tribal consultation requirements. On August 27, 2018, the results of a Sacred Lands File check were received from the Native American Heritage Commission (NAHC). As lead agency for the project, the City reached out to the Tribal representatives listed on the NAHC contact list by letter and/or phone for consultation on February 21, 2018. Both the NAHC and consulting Tribal representatives indicated that the project area is sensitive for potential tribal cultural resources. The City received a request from Andrew Salas, Chairman of the Gabrieleno Band of Mission Indians – Kizh Nation, regarding detailed cultural resource treatment and mitigation procedures.

The consultation was initiated on March 5, 2018, and was completed on January 4, 2019, with a letter sent by the City summarizing the discussions. Mutual agreement was not reached between the City and the Tribe for purposes of AB 52.

The City, in its approvals of the local CDP, found that no new archaeological, paleontological, or tribal cultural resources are anticipated to be identified during implementation of the project, as the project site has been previously disturbed. The City recognized that mitigation measures are required and imposed them in its approval of the project. However, the City required mitigation measures to mitigate potential significant resources impacts that did not fully address the Tribe's concerns or satisfy the requests of the Tribe. The City did not come to an agreement on these measures during consultations with Kizh Nation, and the Kizh Nation does not believe they are sufficient to protect tribal cultural resources.

In accordance with the Commission's Tribal Consultation procedures, Commission staff also contacted the Native American Heritage Commission (NAHC) to request a search of the NAHC Sacred Lands Files. The results of this search were positive, and Commission staff subsequently produced a formal notification of the development and request for consultation on May 24, 2021. The Commission received one response from the Gabrieleno Band of Mission Indians – Kizh Nation. The Chairman of the Tribal entity communicated that the Tribe was not notified about the City's actions on the local CDP, and therefore could not appeal the project to the Commission. Given the Tribe's concerns, the applicant agreed to waive the required 49-working day period during which a Commission hearing on the appeal must be scheduled following filing of the appeal. [Cal. Pub. Res. Code §§ 30621(a) and 30625(a).]

Commission staff consulted with the Tribal entity on September 23, 2021, and was made aware of the cultural significance of the project site. The concerns described during consultation include, generally, that this area is Sacred Land with high potential for tribal cultural resources, and that any development here should be avoided or, at a minimum, reviewed, considered, and monitored very carefully. The Tribal representative provided Commission staff with suggestions on how to minimize impacts to tribal cultural resources and requested that extensive archaeological monitoring by qualified Native American monitors with ancestral ties to the site take place during construction.

In light of the feedback and correspondence received from the Tribal entity during and after the initial consultation with Commission staff, a follow-up consultation took place on November 23, 2021, during which it was agreed that both the Tribal entity and Commission

staff would reach out and coordinate with the applicant on improving monitoring, mitigation, and treatment measures of archaeological, tribal cultural, and paleontological resources.

Given these concerns, the applicant agreed to work with consulting Tribes and Commission staff to propose and implement more protective measures. As a result, the applicant proposed additional resource protection measures in accordance with the Tribe's suggested language, and consequently submitted Coastal Exemption (CEX) No. ADM-2023-1733-CEX for the removal of the first five feet of soils throughout the site, amounting to 325 cu. yds. of total cut, with at least one Native American monitor onsite, in order to implement ground penetrating radar (GPR), a technique used to identify subsurface archaeological, paleontological, and tribal cultural resources. The City approved the CEX, and it became final after a 20-working-day appeal period on June 6, 2023. In addition, the applicant has committed, in writing, to implement the resource protection measures used for the CEX during ground-disturbing activities associated with the subject mixed-use development ([Exhibit 5](#)).

If tribal cultural resources are discovered during the course of project activities, the provided guidelines will be followed. First, the applicant will cease ground-disturbing project activities within 50 feet of the discovery, and then the applicant will coordinate with the appropriate governmental entities, submittal of a Tribal cultural resource treatment and mitigation plan developed in consultation with the appropriate Native American tribal governments. The approved treatment method or mitigation measure(s) for the discovery will ensure that the project remains sensitive to the concerns of the affected Native American groups and will require that at least one Native American monitor from each affected or interested tribal group be invited to be present at the site during all excavation activities to monitor the work. In order to prevent the potential additional exposure of archaeological, paleontological, or tribal cultural deposits upon inadvertent discovery, the applicant will coordinate with the appropriate governmental entities regarding the discovery and apply for a new CDP if project changes are required in order to avoid or mitigate for any impacts to archaeological deposits. If a discovery is deemed significant, the applicant has proposed to submit a Supplementary Archaeological Plan to the appropriate governmental entities and to continue suspension of project activities within 50 feet of the discovery until a follow-up CDP is issued.

The applicant's proposed measures, which go beyond the City's required mitigation measures, were developed in close coordination with Commission staff and Tribal representatives and forward the Commission's Tribal Consultation Environmental Justice policies.

B. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

When determining whether an appeal raises a "substantial issue," Section 13115(c) of the Commission's regulations provide that the Commission may consider factors, including but not limited to:

1. The degree of factual and legal support for the local government's decision;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

Staff recommends that the Commission find that **no substantial issue exists** with respect to whether the local government action conforms to the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

C. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government prior to certification of its LCP are the Chapter 3 policies of the Coastal Act. Any local government CDP issued prior to certification of its LCP may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act.

Section 30222 of the Coastal Act states:

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

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

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

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section 30253 of the Coastal Act states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Each of the appellants' three contentions are addressed, as follows.

First, the appellants assert that the proposed development is incompatible with the mass, scale, and character of the surrounding area, which could therefore result in adverse cumulative impacts to visual resources. In particular, there is concern that the proposed development would be many times larger than the existing structure onsite and will be at least three stories taller than nearby structures on adjacent properties. The appellants further argue that the Edgewater Towers condominium buildings, upslope from the project site and eight stories tall, were built prior to the Coastal Act, and therefore should not be used as a point of comparison for the subject project's compatibility with the mass, scale, and character of the surrounding area. The appellants allege that this project could have cumulative impacts on the visual resources of the area by setting an adverse precedent of increasing building height in the area and are concerned that the nearby Vons store, which is closer to the beach and likely to be redeveloped or expanded in the future, will follow that precedent.

When reviewing the project, the City characterized the immediate area of the subject site as containing a six-story multi-use development to the west in the C2-1XL zone, a one-story commercial shopping center to the northeast in the C2-1VL zone, and an eight-story multi-family housing development upslope and to the southeast in the [Q]R3-1 zone (the Edgewater Towers). To the south, across the driveway leading up to the Edgewater

Towers, is a large, one-story Vons supermarket. Looking across Sunset Boulevard, in addition to the six-story mixed-use development, there are multiple four-story condominium buildings further upslope on Tramonto Drive. The City found that the proposed development would conform with the character of surrounding development and that the proposed development, even with the increased height and density incentives, would be visually compatible with the surrounding area ([Exhibit 3](#)).

Commission staff reviewed the City's findings and approved project plans. Based on the Commission's survey of the area, the Commission concurs with the City's analysis that the proposed development is consistent with the surrounding character of development. The Commission's review includes structures constructed prior to the enactment of the Coastal Act. The proposed five-story, 60-ft.-9-in. mixed-use structure will contain commercial uses on the ground level and multi-family residential uses above, consistent with the pattern of development within the immediate project area. In addition to the compatibility of the project with the mass and scale of nearby large-scale development, the project is designed to be visually compatible with the surrounding neighborhood as the ground floor will incorporate a two-foot building setback along Sunset Boulevard with recessed entries for each of the commercial tenants. Additional building setbacks are incorporated on the fourth and fifth levels of the building facing Sunset Boulevard, along with added balconies to four units on the second and third levels fronting Sunset Boulevard, to break up the massing of the structure by adding more building modulation and projections. The public right of way will be improved with additional landscaping and street trees. And finally, the project will not affect any public views to and along the ocean from Sunset Boulevard or PCH, as it is not located adjacent to the shoreline nor adjacent to a highly prominent public vantage point.

The appellants contend that the project will exceed the two-story, 30-ft. height allowed per the City's uncertified Specific Plan and that it will set an adverse precedent to justify future five-story residential structures on Sunset Boulevard and PCH. However, the main reason that the City approved the project at this height and scale is because of the State's housing crisis and related Density Bonus Law incentives. The project is still otherwise consistent with the City's uncertified Specific Plan and Zoning Code. It is thus improbable that adjacent properties, such as the Vons store, could be redeveloped into "lucrative, private, residential developments," as asserted by the appellants, unless they offered enough affordable housing units to earn the incentives. Even while the City's development standards per the Specific Plan, Zoning Code, and the State's Density Bonus Law are not part of the Commission's review, the City correctly found that the project, as proposed, will not set an adverse cumulative impact on visual resources as required by Chapter 3 policies of the Coastal Act.

Therefore, the contention that the proposed development is visually incompatible with the mass, scale, and character of the surrounding area, including the height, size, residential density, and mixed-use nature of the proposed development, does not raise a substantial issue with Section 30250, 30251, or 30253 of the Coastal Act.

Second, the appellants contend that the proposed project would prioritize residential uses over visitor-serving commercial and coastal recreational uses, as required in Section

30222 of the Coastal Act. The appellants state that the subject lot is zoned commercially, is located in proximity to the beach, and yet 91% of the square footage will be for residential purposes with only 9% for commercial uses. The appellants also allege that the proposed 2,900 sq. ft. of commercial use will be less than the previous 3,000 sq. ft. visitor-serving fast-food restaurant on the site.

Based on information associated with the City's approval, the existing structure that previously hosted a visitor-serving fast-food restaurant is only 1,860 sq. ft. ([Exhibit 3](#)); therefore, the appellants' claim that the proposed project will reduce commercial space by 100 sq. ft. is incorrect, and rather, will actually increase commercial uses by 1,040 sq. ft. over existing. In addition, the City-approved project provides for commercial, as well as residential use onsite, including affordable housing units. The proposed mixed-use development is comprised of commercial and residential uses and density that are allowable in the City's uncertified C2-1VL zone.

Section 30222 of the Coastal Act requires that suitable private lands be prioritized for visitor-serving commercial uses and recreational facilities designed to enhance public opportunities for coastal recreation, as compared to private residential, general industrial, or general commercial development, but not over coastal-dependent industry. Section 30223 requires that upland areas necessary to support coastal recreational uses be reserved for such uses where feasible. Section 30255 reiterates the same for prioritizing coastal-dependent developments on or near the shoreline.

In this case, the previous fast-food restaurant use, while visitor-serving, was not necessarily "designed to enhance public opportunities for coastal recreation," and will not be displaced by new commercial uses of lower priority. Many adjacent commercial uses could also be considered "general commercial" per Section 30222, and this area at the intersection of Sunset Boulevard and PCH is not known to provide facilities that specifically support coastal recreational uses. Examples of existing adjacent commercial and industrial uses include, but are not limited to, restaurants, take-out food establishments, grocery stores, gas stations, art galleries, banks, offices, supply stores, and laundromats. In the nearby vicinity, there are also community/institutional uses such as schools, City services, and religious organizations. There are not any known coastal-dependent or visitor-serving, coastal recreational commercial uses in the immediate area, such as those supporting boating, water sports and beachgoing activities, coastal overnight accommodations, or coastal-dependent industry.

As such, the City-approved project is consistent with Sections 30222, 30223, 30250, and 30255 of the Coastal Act by concentrating mixed-use commercial and residential development in an area able to accommodate it and by providing affordable housing in the coastal zone, including for lower income individuals and families, which will not adversely affect public access to the coast. Because the development will be consistent with the prioritization of land uses in Chapter 3 of the Coastal Act, this contention therefore does not support a substantial issue.

Finally, the appellants contend that the City approved the project without adequate or accurate geotechnical information and that the project is not consistent with the geologic

hazards and stability requirements of Section 30253 of the Coastal Act. The appellants submitted a geologic review prepared by ENGEO dated July 13, 2020 that responds to the applicant's Geotechnical Investigation prepared by AES dated January 24, 2017. The appellants claim that upon review of the facts, it appears that the applicant's report is based on inadequate test pits and previous geotechnical reports that are over 50 years old. The appellants' report states, for example, that the applicant's geotechnical investigation provides "limited to no site-specific information about the soil conditions behind the proposed [retaining] wall," and that it is unclear if AES performed slope stability analyses to support that the project would have no offsite impacts.

AES submitted a letter dated August 26, 2020, refuting the claims from the ENGEO letter and in support of the City's Grading Division approval dated April 19, 2018. The PLUM Committee and City Council factored both the appellants' and applicant's reports into their decision when they made the determination to deny the local appeal and sustain approval of the CDP ([Exhibit 3](#)). In fact, the City relied on several geotechnical reports, foundation plans, and a slope stability analysis to conclude that the new development assures stability and structural integrity in areas of geologic hazard consistent with the requirements of the Coastal Act.

The applicant's latest geotechnical report prepared by AES states that bedrock was encountered from between two to ten ft. below ground surface in previous geotechnical investigations, and three test pits and three hollow-stem auger borings conducted in 2016 similarly encountered up to four to five ft. of surficial fill and soil over the sedimentary bedrock. The artificial fill was identified on the surface of the entire project site, ranging between two and five ft. deep, which is relatively thin on the steep backslope and thicker at lower elevations. The fill consists of dark brown silty sandy clay, clayey silty sand to sandy clayey silt, with scattered angular gravel. A colluvium layer was found situated between the artificial fill and much older bedrock and measures one to three feet in thickness.

As the applicant's geotechnical consultant importantly notes, the existing fill, ascending slope at the rear property line (ranging from near 1:1 to 2:1 horizontal-to-vertical), and the colluvium layer will be automatically removed from the site as part of the proposed site basement garage excavation work (which will reach a depth of 9 ft. and 9 in. below grade, see [Exhibit 2](#)). For that reason, AES did not foresee a need to perform a slope stability analysis, since the vast majority will be entirely eliminated from the site.

The existing approximately 40-ft.-tall retaining wall constructed in 1972 at the rear of the property will be removed and replaced with a new approximately 38-ft.-tall retaining wall of slightly varied heights, which will act to permanently shore the abutting offsite slope, and all cuts will be supported by temporary and permanent shoring systems ([Exhibit 2](#)). In past actions, the Commission has considered the construction of retaining walls with deepened foundations meant to serve as shoring systems as protective devices adjacent to coastal bluffs and canyons. New development is not ordinarily permitted to be constructed if it requires such protective devices when adjacent to bluffs or canyons. However, because the project is not substantially altering natural landforms located on or near a coastal bluff or a canyon, the construction of the protective devices is not inconsistent with Section 30253(b) and therefore does not raise a substantial issue.

The adjacent offsite slope underlying the Edgewater Towers property is prone to liquefaction and landslide, but it is not anticipated that the City-approved project will exacerbate the lateral movement of offsite development beyond the existing condition. The applicant's geotechnical reports conclude that the areas of exposed bedrock do not contain any weakness that would create a landslide, as the appellants claim. The report also concluded there was no recent evidence of slides in the area, even after significant rainfall.

The City's review of the geotechnical information submitted by the applicant, and the City's approval of the project with conditions, considered any possible shortcomings of the reports by requiring the appropriate foundational elements. The City's permit has addressed the geologic issues through permit requirements; conditions of approval included requirements by the Department of Building and Safety that project elements be supported on foundations that extend into bedrock, that the structural fill and retaining wall backfill be carried out under the supervision, approval, and monitoring of a City soil engineer, and that site drainage avoid the slope. The findings are based on current geotechnical information and properly concluded that compliance with the conditions will minimize risk to life and property and will ensure that the project will not create nor contribute significantly to erosion, geologic instability, or destruction of the site. The applicant will still be required to complete final review by the City's Department of Building and Safety prior to construction. The Commission's staff geologist and engineer reviewed all relevant documents and concur with the City's findings and approval. Therefore, this contention does not raise a substantial issue.

In conclusion, the conditioned foundational elements will minimize risk to life and property and will assure stability and structural integrity. The project is not located on a coastal bluff, and the geotechnical reports indicate that the development will have a minimum 1.5 factor of safety² and will not create nor contribute significantly to erosion, geologic instability or destruction of the site. The project is consistent with Section 30253 of the Coastal Act, and therefore, there is no substantial issue.

Concerns raised by the appellants that are not grounds for appeal include that the City did not adequately apply, review, analyze, or consider the Brentwood-Palisades Community Plan, the Pacific Palisades Commercial Village and Neighborhoods Specific Plan, and the Regional Interpretive Guidelines for the South Coast Region. The City determined that the project will be consistent with the above plans and guidelines, but regardless, compliance with these documents and policies, or lack thereof, is not grounds for an appeal. The project's consistency with the State's Density Bonus Law (Government Code §65915) also does not constitute grounds for an appeal. Thus, the appellants' contention that the City erred in its determination as it relates to the project's consistency with these other plans,

² The factor of safety is an indicator of slope stability, where a value of 1.5 for static analysis and 1.1 for pseudostatic ("seismic") analysis are the typical industry, building code, and Coastal Commission standards for geologic stability of new development. In theory, failure should occur when the factor of safety drops below 1.0. Therefore, the factor of safety at increasing values above 1.0 lends increasing confidence in the stability of the slope.

guidelines, and statutes does not raise substantial issue with regard to the project's conformity with the Chapter 3 policies of the Coastal Act.

SUBSTANTIAL ISSUE FACTORS:

The Commission's standard of review for determining whether to hear the appeal is whether the appeal raises a substantial issue as to conformity with Chapter 3 of the Coastal Act. Cal. Pub. Res. Code § 30625(b)(1); 14 CCR § 13321. The Commission's decision is guided by the factors listed in the previous section of this report.

1. The degree of factual and legal support for the local government's decision that the development is consistent with the relevant provisions of the Coastal Act. The City found the project would be consistent with the community character and land uses of the area, as required by Sections 30222, 30223, 30250, 30251 and 30253 of the Coastal Act. The City conducted an analysis of the immediate area, and also looked at development in the vicinity across Sunset Boulevard, and found that the proposed project, even as enhanced by bonus density incentives, would meet the necessary density, height, and land use standards in compatibility with the surrounding neighborhood. The Commission's review of the City's community character and cumulative impacts analyses support the City's decision. The City also provided analysis and supporting evidence that the proposed project is designed to minimize geologic hazards and assure stability and structural integrity without requiring protective devices that would substantially alter natural landforms. Therefore, the Commission finds that the City did provide an adequate degree of factual and legal support for its decision. This factor supports a finding of no substantial issue.

2. The extent and scope of the development as approved or denied by the local government. The City-approved development will demolish a fast-food restaurant, to be replaced with a new six-story mixed-use residential structure within an urbanized multi-use commercial/residential area that is able to support such development without adverse impacts on coastal resources. The scope is consistent with that of the surrounding development, which is comprised of one-story to eight-story commercial, residential, and mixed-use development. The City also provided analysis and supporting evidence that the proposed project will result in an increase of housing density and affordable units at the site, in an area that can support such development. Therefore, the Commission finds that this factor supports a finding of no substantial issue.

3. The significance of the coastal resources affected by the decision. Community character and visual appearance can be significant coastal resources in commercially-oriented, visitor-serving, coastal-adjacent areas that provide popular visitor destination points for recreational uses. As described above, the City-approved development will not have an adverse visual impact to this area of Pacific Palisades. The locally-approved development provides adequate parking, preserves visual resources with its mass and scale, and does not raise issues of coastal hazards. Therefore, this factor supports a finding of no substantial issue.

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

Although the City does not currently have a certified LCP for the Pacific Palisades area, City approvals can sometimes have a precedential impact on future decisions because the City’s standard when reviewing and approving projects is consistency with Chapter 3 of the Coastal Act. The City-approved development is consistent with Sections 30222, 30223, 30250, 30251, and 30253 of the Coastal Act. The City’s approval of the proposed project is also consistent with several other permit decisions in the area, which authorized construction of new residential and commercial development. The project, as approved, does not raise a substantial issue with the project’s consistency with the Chapter 3 policies of the Coastal Act, as set forth above. Therefore, the Commission finds that the City-approved development will not have an adverse impact on future interpretations of its LUP and will not prejudice the City’s ability to certify an LCP. The Commission finds that this factor supports a finding of no substantial issue.

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

Proper siting and design of new development to minimize adverse impacts to community character, visual resources, coastal recreation, and geologic stability are important statewide issues. The City-approved development is consistent with the applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that, based on the issues raised in the appeal, the City-approved CDP does not raise substantial issues of statewide significance. As such, this factor supports a finding of no substantial issue.

Conclusion

Applying the five factors listed above clarifies that the appeal raises no substantial issue on the grounds on which it was filed with respect to the project’s consistency with Chapter 3 of the Coastal Act, and there is sufficient support that the project is consistent with the Chapter 3 policies, with respect to compatibility with community character, preservation of visual resources, provision of visitor-serving uses and opportunities for coastal recreation, and assurance of geologic stability. The decision is not likely to set an adverse precedent or to prejudice the City’s ability to prepare an LCP in the future. Therefore, the Commission finds that, based on the issues raised in the appeal, the appeal raises no substantial issue as to the project’s conformity with the Chapter 3 policies of the Coastal Act.

Appendix A – Substantive File Documents

- Local Coastal Development Permit (CDP) No. CPC-2018-504-DB-DRB-SPP-CDP-MEL-1A and associated file documents.