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May 27, 2021

VIA E-MAIL

Chair Harris-Dawson and Honorable Members of the
Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Room 395
Los Angeles, CA 90012

clerk.plumcommittee@lacity.org

Re: Appeal for 811-815 South Ocean Front Walk Boulevard; Council File No. 21-0013

Dear Honorable Members of the PLUM Committee:

This firm represents 811 Ocean Front Walk, LLC and 815 Ocean Front Walk, LLC (the “Applicant”) in connection with the proposed demolition of nine residential dwelling units within three buildings and the construction of a three-story, 13,412 square foot mixed-use building with nine dwelling units, including one Low Income affordable unit, and a 1,568 square foot ground floor restaurant (“Project”) located at 811-815 South Ocean Front Walk (“Project Site”) in the Venice community. On December 15, 2020, the City Planning Commission (“CPC”) issued a determination and granted approvals for the Project that included a (1) Coastal Development Permit; (2) Project Permit Compliance Review for the Venice Coastal Zone Specific Plan; (3) Density Bonus Compliance Review; (4) Conditional Use Permit for the onsite sale of alcohol within the proposed restaurant; and (5) Mello Act Compliance Review. The CPC also determined that the Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, Section 15332.

On December 30, 2020, POWER, Citizens Preserving Venice, Lydia Ponce, and Margaret Molloy (collectively, the “Appellant”) appealed the entire CPC’s determination (the “Appeal”). A substantial portion of the Appeal contains comments regarding the City’s proposed permanent ordinance to implement the State Mello Act of 1982 (the “Mello Act”; California Government Code Sections 65590 and 65590.1) and grievances related to other Mello Act determinations issued by the City. This response focuses on the assertions raised by the Appellant related to the Project. Specifically, the Appeal alleges that the Project violates the Mello Act and the City’s Interim Administrative Procedures for Complying with the Mello Act (“IAP”) and that the Project may only be developed with residential uses. As demonstrated below, the Appeal is meritless, and we respectively request that the PLUM Committee deny the Appeal and uphold the CPC’s determination.

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1. The Project is Consistent with the Mello Act and IAP

The Appellant's first claim is that the Project is inconsistent with the Mello Act and that the existing nine residential units are affordable units that must be replaced in the Project. The Mello Act provides, in pertinent part, that, within the Coastal Zone, the demolition of existing residential dwelling units occupied by persons and families of low- or moderate-income shall not be authorized unless provision has been made for the replacement of those dwelling units for persons of low- or moderate-income (i.e., "affordable replacement" dwelling units).

Pursuant to the IAP, which is used to determine compliance with the Mello Act, the City must determine if existing residential units proposed to be demolished are classified as Affordable Residential Units and subject to replacement in a new development. The City's Housing and Community Investment Department ("HCIDLA") is responsible for making this determination under the IAP.

As stated in the CPC determination, HCIDLA issued a letter dated July 14, 2015, that determined there are no Affordable Residential Units on the Project Site. HCIDLA's determination was based on substantial evidence that included the following facts as stated in the CPC determination: (1) On May 10, 2007, a Notice of Intent to Withdraw Units (Ellis Act) from Rental Housing Use was filed with the Los Angeles County Recorder's Office and was granted by HCIDLA on September 24, 2009, which removed the existing units from rental use; (2) In February 2008 and July 2012, HCIDLA Enforcement inspectors noted the subject property was vacant and boarded up, which remains the current state of the units today; (3) the owner provided a security contract and billing statements for 24-hour security patrol for the period from April 2013 to April 2016 to ensure the security of the Project Site and vacant units.

HCIDLA's determination that there are no Affordable Residential Units on the Project Site is further supported by HCIDLA's subsequent AB2566 Replacement Unit Determination, dated August 19, 2020, which concluded there are no affordable units subject to replacement on the Project Site. HCIDLA based its determination on information provided by the Department of Water and Power, which showed little or no utility usage for the five-year period from January 2015 through January 2020, and Southern California Gas Company, which confirmed in writing that the gas meters for the units were removed, and service abandoned, in 2007. HCIDLA and CPC correctly determined that there are no existing Affordable Residential Units on the Project Site subject to replacement under the IAP.

In contrast to the voluminous substantial evidence supporting the CPC's determination, the Appellant's claims to the contrary are based upon unsubstantiated hearsay. The Appellant has not provided any specific facts to contradict the CPC's determination.

Finally, the Appeal alleges at one point that there are 10 existing units, and that this means the Project requires an inclusionary affordable unit. This is incorrect for several reasons. First, HCIDLA's August 19, 2020 AB2566 determination clearly states that there are nine total existing

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dwelling units on the Project Site, not 10. Second, the Appellant implies, incorrectly, that the IAP's inclusionary unit requirement is based on the number of existing units, when in fact the inclusionary requirement is based on the number of new units proposed (*see* IAP Section 5.0). Because the Project would include only nine total units, it is not subject to the IAP's inclusionary unit requirement.

Note that, although the Project is not subject to any Mello Act replacement or inclusionary affordable unit requirements, the Project proposes to include one Low Income affordable unit (or approximately 11 percent of the total proposed nine units) to qualify for Density Bonus incentives.

2. A Mixed-Use Project is Permitted under the Mello Act and Coastal Act

The Appellant claims that the Project violates the Mello Act by including a commercial component, and that Project must be all residential. However, the Appellant misconstrues the Mello Act, which prohibits the demolition of an existing residential structure and replacement with a "nonresidential use which is not "coastal dependent." (California Government Code Section 65590(c)), and the IAP, which prohibits the demolition or conversion of residential structures "for purposes of a non-Coastal dependent, non-residential use" (IAP Section 4.1.) These provisions prohibit replacement of residential structures with *entirely* non-residential uses. Here, the Project proposes a mixed-use development made up primarily of residential uses (with the same number of residential units as the existing structures) along with a ground-floor restaurant. The ground-floor restaurant is included in the Project to comport with policies set forth in the certified Venice Land Use Plan ("Venice LUP") and guided by past decisions of the California Coastal Commission ("Coastal Commission") for development along the Venice boardwalk.

The Venice LUP serves as the City's guidance document to determine general conformance with the Chapter 3 polices of the Coastal Act, and the Venice LUP contains policies which seek to guide the use and development of property. The Venice LUP designates the Project Site for Community Commercial land use. Policy I.B.2 (Mixed-Use Development) of the Venice LUP encourages mixed-use development in commercial designated areas and Policy I.B.6 further provide that Community Commercial area "will accommodate the development of community serving commercial uses and services, with a mix of residential dwelling units and visitor-serving uses" and "should be developed as, mixed-use centers that encourage the development of housing in concert with multi-use commercial uses."

Moreover, the Venice LUP identifies the Project Site within a Community Commercial Area of Special Interest which encourages development of visitor-serving uses and personal services emphasizing retail and restaurants on the ground floor with either residential or personal services on upper floors. In fact, the Appellant submitted into the record email correspondence from Coastal Commission staff dated June 5, 2015, which states that "a new 100% residential project would not conform to the land use policies of the certified LUP or the Chapter 3 policies that prioritize visitor-serving uses along the shoreline. A mixed-use project, with residential above commercial, would conform to the LUP and Chapter 3."

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This position is supported by recent City and Coastal Commission decisions. In Case DIR-2017-1124-CDP-MEL-SPP-1A at 706 S. Hampton, which is also designated Community Commercial by the Venice LUP, the West Los Angeles Area Planning Commission denied an appeal (filed by some of the same individuals appealing this Project) and upheld the Director's Determination, including a Mello Act Compliance Review determination, approving the demolition of a residential dwelling and construction of a mixed-use project with residential and commercial uses. The West Los Angeles Area Planning Commission's decision was further appealed to the Coastal Commission, which determined there was no substantial issue with respect to the grounds of the appeal because the mixed-use project was consistent with the Coastal Act. The Coastal Commission's staff report also commented on the Mello Act and noted that the appellants were "inaccurate in their assertion that the City-approved development [mixed-use] will remove residential housing in favor of non-residential development."

In another proposed project located at 3011 Ocean Front Walk, also designated Community Commercial, the City approved DIR-2016-4749-CDP-MEL-SPP and granted a Coastal Development Permit and Mello Act Compliance Review for the demolition of an existing residential structure and the construction of a new single-family residence. The City's determination was appealed, and the Coastal Commission found substantial issue and determined that "[t]he proposed use is a single-family home; a private residential development that does not provide commercial and visitor-serving facilities, which is not consistent with the land use policy (I.B.6) set forth by the certified Venice LUP or Coastal Act Section 30222's requirement to protect such properties for visitor-serving commercial recreational facilities." Subsequent to the Coastal Commission's appeal hearing, the project was substantially revised, and the Coastal Commission approved a mixed-use structure with ground floor retail with a single-family residence.

These precedent cases demonstrate that, not only is the proposed mixed-use project with a ground floor restaurant and residential units on the upper floors permitted by the Mello Act and consistent with type of development encouraged by the Venice LUP and Coastal Act, the Coastal Commission could very well find issue with the Project on appeal if the Project was *not* mixed-use.

The City's proposed permanent Mello Act implementation ordinance (the "Mello Act Ordinance") specifically allows mixed-use development for purposes of Affordable Replacement Unit requirements. The current version of the draft ordinance provides, "A mix of uses is permitted, so long as the structure provides all required Replacement Affordable units on site and Inclusionary Units." On May 13, 2021, the City Planning Commission held a public hearing to consider the Mello Act Ordinance, following which it recommended that the City Council approve the ordinance (with minor changes unrelated to the mixed-use development provisions).

During the May 13 hearing, City Planning staff rejected the arguments made by certain community members—including several of the same individuals appealing this Project—that the Mello Act prohibits replacing residential projects with mixed-use projects, noting that the Planning

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Department has always interpreted the IAP this way and has yet to receive any appeals from the Coastal Commission regarding this position.

As the City Council has not yet approved the Mello Act Ordinance, the IAP remains the governing document regarding the Project's Mello Act compliance. However, staff's presentation and the Planning Commission's recommendation make clear that the ordinance will simply formalize the City's long-standing practice of allowing mixed-use projects to replace residential structures, a practice that has repeatedly been deemed to comply with the Mello Act. The Appellant's arguments to the contrary—which have been tried and failed in other venues—are once again incorrect here.

3. The Project is Consistent with Development and Character of the Neighborhood

The Appellant claims that the change from residential to a mixed-use development with residential and commercial uses would significantly change the character of the property and surrounding area and that existing housing units and residential character must be maintained. To support this assertion, the Appellant cites to a policy in the Venice LUP which relates to development of recreation and visitor-serving facilities in the Coastal Zone and is not applicable to the Project. Moreover, even if that policy were directly applicable to the Project, the Project would, consistent with the policy, "retain the existing character and housing opportunities of the area."

As noted in the CPC's determination, the Project Site is located along a commercial strip fronting on Ocean Front Walk, a pedestrian walkway that fronts on Venice Beach. This commercial strip is part of the larger Venice Boardwalk, which is a regional and international tourist attraction and surrounding properties include a mix of residential and commercial uses. In addition, the CPC's findings concluded that "the Project is visually compatible in scale and character with the existing neighborhood, and the Venice Coastal Development Project would not be materially detrimental to adjoining lots or the immediate neighborhood." Moreover, as discussed above, the Project would include the same total number of residential units as the existing structures.

The Appellant has not provided any evidence, substantial or otherwise, demonstrating that the Project violates the Mello Act or the Coastal Act. The Appellant's references to Sections 30013, 30107.3, 30604, and 30116 of the Coastal Act are irrelevant. First, these sections are primarily permissive in nature, or are declarations of policy, and do not impose mandatory requirements. Moreover, as discussed above, the Project Site does not include any existing affordable units that would implicate the policies the Appellant cites.

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Accordingly, based upon the clear evidence in the record and the CPC determination, we respectfully ask that your Committee deny the Appeal, and allow the Project to move forward.

Thank you for your consideration, and please contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "Dave Rand", with a long horizontal line extending to the right.

Dave Rand

cc: Ira Brown, Department of City Planning
Len Nguyen, Council District 11