

Communication from Public

Name: Citizens Preserving Venice

Date Submitted: 05/27/2021 06:54 PM

Council File No: 21-0013

Comments for Public Posting: City Council Planning and Land Use Management Committee members, Please review the attached letter from Venskus & Associates and the California Women's Law Center. It thoroughly explains the legal issues related to our appeal point for this case that a demolition or conversion of the existing residential structures at 811-815 Ocean Front Walk for purposes of the proposed mixed use project must not be allowed, as per the state Mello Act. Please note specific mention of this project on page 5, and that there is a pattern and practice of such violations that is resulting in a serious adverse cumulative impact on housing in the Venice Coastal Zone. Please don't hesitate to let us know if you have any questions in this regard.



May 4, 2021

CPC-2019-7393-CA
ENV-2019-7394-ND

Re: Mello Act Ordinance must not allow demolitions/conversion of residential structures for purposes of mixed-use projects

Dear Los Angeles City Planning Commissioners:

The California Women's Law Center ("CWLC") is a non-profit law and policy center whose mission is to create a more just and equitable society by breaking down barriers and advancing the potential of women and girls through transformative litigation, policy advocacy and education. We focus on addressing economic justice, gender discrimination, violence against women, and women's health.

Venskus & Associates, APC is a boutique law firm litigating in the areas of housing rights and environmental/land use. The law firm represents and advocates for traditionally under-represented plaintiffs, such as low-income tenants, community organizations and environmental groups.

We write to urge the Los Angeles City Planning Commission ("Planning Commission") to ensure that its proposed Mello Act Ordinance (CPC-2019-7393-CA) does not:

- exceed the City's jurisdiction by conflicting with, or changing the meaning of, state law;
- run afoul of the Settlement Agreement Concerning Implementation of the Mello Act in the Coastal Zones within the City of Los Angeles ("Settlement Agreement");
- establish a law that is weaker than the City of Los Angeles' ("City") Mello Act Interim Administrative Procedures ("IAP").

The Settlement Agreement provided that the City must adopt Interim and Permanent Ordinances to implement both the Mello Act and the provisions of the Agreement. In response, the City adopted the IAP in 2000. In 2015, the City Council requested that City Planning prepare a permanent ordinance, but one was not adopted at that time. In April 2019, the City Council directed the Planning and Housing Departments to prepare and present a permanent ordinance to implement the Mello Act. In December 2019, the City's proposed Mello Act Ordinance was released. On February 25, 2021, the Planning Commission reviewed the proposed ordinance, but the vote was continued to May 13, 2021.

Adopting a permanent ordinance is an important step to protect housing stock including, specifically, affordable and Rent Stabilized (RSO) housing in the City’s coastal zones, and to prevent displacement of people and communities. The ordinance must be in accordance with controlling state law and the Settlement Agreement. As currently proposed, the Mello Act Ordinance is not in accordance with controlling authority and thus exceeds the City’s jurisdiction.

I. The purpose of the Mello Act is to preserve residential structures in the coastal zone, to protect existing affordable housing, and to provide new affordable housing

As stated in the IAP, under the Mello Act each local jurisdiction shall enforce three basic rules—

1. maintain existing residential structures,
2. replace converted or demolished affordable units
3. provide inclusionary residential units in new housing developments.

However, by adding clause 12.21.H.c.7. Mixed Use in the draft Mello Act Ordinance, the City is not honoring the first requirement, which states:

“Existing residential structures shall be maintained, unless the local jurisdiction finds that residential uses are no longer feasible.” (IAP pg. 7.)

California courts also have made clear that the Mello Act’s purpose is to preserve housing in the Coastal Zone. The Court of Appeal stated that the purpose of the Mello Act is:

“to preserve residential units occupied by low or moderate-income persons or families in the coastal zone.”¹

The California Supreme Court similarly explained that:

“[t]he Mello Act supplements the housing elements law, establishing minimum requirements for housing within the coastal zone for persons and families of low or moderate income.”²

In fact, the Mello Act specifically mentions the housing elements state law, making it clear that the Mello Act is a law that protects housing for all income levels and certainly not one that would allow for non-residential uses. One of the main avenues the Mello Act proscribes for protecting residential housing is to limit the ability to convert existing residential structures to non-residential uses. To allow such conversions would not only violate both the letter and the spirit of the Mello Act, but it would plainly threaten housing, by allowing its destruction for purposes of a more lucrative commercial use, including mixed use projects, thus displacing families and damaging coastal communities that are already holding on by a thread—exactly what the Mello Act was intended to prevent.

¹ *Venice Town Council v. City of L.A.*, 47 Cal. App. 4th 1547, 1552-53 (1996).

² *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 55 Cal. 4th 783, 798 (2012) (emphasis added).

The Mello Act states:

“The conversion or demolition of any **residential structure** for purposes of a nonresidential use which is not ‘coastal dependent,’ as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location.”

This language is repeated in IAP section 4.1 (also covered in the Settlement Agreement, section VI.C.1.):

“The Mello Act states that the Demolition or Conversion of **residential structures** for the purposes of a non-Coastal-Dependent, non-residential use is prohibited, unless the local jurisdiction first finds that a residential use is no longer feasible at that location.”

II. As proposed, the draft Mello Act Ordinance exceeds the City’s jurisdiction and violates the Settlement Agreement

The draft Mello Act Ordinance exceeds the City’s jurisdiction. Under article XI, section 7 of the California Constitution, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”³ The Mello Act is a state statute; therefore, any attempt to enact an ordinance in conflict with it is in excess of the City’s authority.

The City must also comply with the Settlement Agreement in enacting the Mello Act Ordinance. The permanent ordinance must be consistent with both the Mello Act and the provisions of the Settlement Agreement. Adopting an ordinance that is contrary to the provisions of the Settlement Agreement would be in violation of the Settlement Agreement itself.

III. Words have meaning: terminology in land use law is specific

The draft Mello Act Ordinance new proposed provision (LAMC 12.21H.c.7.) for conversion to mixed uses changes the meaning and application of the Mello Act by stating:

“Mixed Use Development. A proposed mixed use development may not result in a net reduction in the total number of existing Residential Units unless a residential use is no longer feasible. A mix of uses is permitted, so long as the structure provides all required Replacement Affordable and Inclusionary Units.”

This new provision would allow for the conversion of one hundred percent residential structures to non-residential mixed uses and by doing so, change the meaning, spirit, and purpose of the Mello Act. This change is in direct violation of the Mello Act and the Settlement Agreement, which explicitly forbid the conversion of a residential structure to a non-residential use.

³ *Sherwin-Williams Co. v. City of L.A.*, 4 Cal. 4th 893, 897 (1993).

This new conversion provision included in the draft Mello Act Ordinance essentially changes the Mello Act, as follows:

“Conversion or demolition of any ~~Residential Structure~~ **residential unit or residential use**, for purposes of a non-residential use that is not Coastal-Dependent, is prohibited, unless a residential use is no longer feasible at that location.”

This new provision has the effect of replacing the word “structure,” as used in the Mello Act, the Settlement Agreement and IAP, with “unit or use.” The words “structure” and “unit” are not interchangeable. Nor are the words “unit” and “use.” The word “structure” refers to an entire building as an entity, while the word “unit” refers to an individual dwelling, which may be one of many within a single structure. This is an important distinction, because the use of the word “structure” in both the Mello Act and the IAP intentionally protects the entire residential building.

The terminology used in land use law is specific and purposeful. The use of “unit” in the Mello Act pertains to sections of the law related to protecting existing affordable housing or providing inclusionary affordable housing, whereas “structure” relates to the protection of housing from the desires of developers for more lucrative commercial uses, including mixed use.

A residential structure in a commercial zone may also not be changed to a mixed use, as the Mello Act specifically protects housing regardless of zoning. Furthermore, the definition of a “residential structure” does not include “mixed use,” which is considered a commercial use and is restricted to commercial zones. A “residential structure,” on the other hand, is permitted in both residential and commercial zones. They are far from equivalent. Therefore, the substitution of “unit or use” in the proposed ordinance amounts to a sleight of hand, *apparently to promote the substitution of mixed use structures in place of residential structures*. This was clearly not the intent of the clear and carefully chosen language of the Mello Act, the Settlement Agreement and the IAP.

Municipalities are permitted to strengthen the local implementation of a statute, but not to weaken it. As per the Mello Act, Government Code Section 65590(k):

...[t]his section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

The present use of the term, “residential structure” protects an entire building, whereas “residential unit or use” does not, necessarily. It would therefore weaken the implementation of the statute and is thus beyond the jurisdiction of the City.

IV. Conversion to mixed use is used as loophole to allow unpermitted conversions to commercial uses

The result of the change in terminology will destroy housing by allowing for conversion to commercial uses. Replacing the word “structure” with the words “unit” or “use” is beyond the jurisdiction of the City because it contradicts the Mello Act, a state law.

The City’s Mello Act Ordinance must also comply with the Mello Act’s intent. Since this new mixed use provision would effectively change the meaning, in direct contradiction to the Act’s intent, the City would be acting in excess of its jurisdiction.

The harm from the City’s attempt to exceed its jurisdiction by allowing conversion or demolition of residential structures for purposes of non-residential use is not just theoretical. Several recent projects have already seized on the current, draft language of the proposed Mello Act Ordinance, regarding “residential units” or “residential uses,” to justify approval of the conversion of residential properties to mixed-use properties. Many of these properties have then illegally converted the entire structure to commercial, non-residential use, with no consequence.

Thus, already the use of “units or uses” rather than “structures” has created a loophole to allow developers to convert one hundred percent residential use structures to “mixed use” and then fail to actually maintain any residential uses, in violation of state law and the Settlement Agreement.

A. Example #1: 1214 Abbot Kinney Blvd.

First, for the property at 1214 Abbot Kinney Blvd., in 2014, the City approved a change of use from residential to mixed use, in violation of the Mello Act. Since then the property has been used illegally as commercial office use, even though it was only approved for conversion to “mixed use.” Yet another example of ongoing use of residential structures for commercial use is 619-701 Ocean Front Walk, aka Thornton Lofts. When the tech industry moved in they took over residential structures for offices. There are numerous other similar examples of unpermitted mixed uses or full commercial uses where the structures are only permitted for residential use.

B. Examples #2 & #3: 811-815 Ocean Front Walk, and 1310 Abbot Kinney Blvd.

Other Coastal Zone projects are pending that would violate the Mello Act by allowing demolition of 100% residential structures for purposes of a mixed-use development. One example is the project at 811-815 Ocean Front Walk, which proposes the demolition of three residential structures for purposes of a mixed-use commercial development. Another example is the project proposed at 1301-1303 Abbot Kinney, which is requesting a change of use from a 100% residential triplex structure to two live/work mixed use units. The approvals of both of these projects have been appealed. If these projects are ultimately approved by the City it will be in clear violation of the state Mello Act and the Settlement Agreement. There are other examples where the City approved a residential structure to be replaced by “artist in residence” use, a mixed use, but they do not meet the code’s definition of artist and thus the structures have become essentially all commercial use.

C. Example #4: 1047 Abbot Kinney Blvd.

One final example is the three bungalows at 1047 Abbot Kinney Blvd., which have certificates of occupancy as residential units but have for years been illegally used for a non-residential use. The City recently approved the demolition of those bungalows for purposes of the Venice Place mixed use project, for which they will be covered by the hotel's CUB, and they will be included in the hotel buildings, very likely losing their identity as housing.

These examples illustrate that because the as-now-proposed Mello Act Ordinance provisions regarding conversion to mixed use contradict the Mello Act's language and intent to protect housing, developers have exploited, are currently exploiting, and will likely continue to exploit this "mixed-use" loophole to effectively destroy residential housing, including and especially affordable housing for low-income residents and communities of color, thus causing a gross, unacceptable, adverse cumulative impact on housing, including affordable housing, in the Los Angeles Coastal Zones.

All of this is an unfortunate, perhaps unconscious, continuance of the City's practices of institutional racism.⁴

V. If not amended, the draft Mello Act Ordinance will disproportionately harm low income communities of color in the Coastal Zone as new mixed use development will be encouraged

The impact of the destruction of housing that has and will continue to result from the Mello Act Ordinance if the ability to convert residential structures to mixed uses is not eliminated, disproportionately harms communities of color. In 2017, California had nearly two million rent burdened households of color that spent more than thirty-percent of the household income on rent and utilities.⁵ There were also 1.6 million extremely low-income renter households, two-thirds of which were households of color.⁶ During the COVID-19 pandemic, there has been a disproportionate financial impact on populations of color, which has created even greater disparities.⁷ All housing will be put in jeopardy in the Coastal Zone if the draft Mello Act Ordinance is not amended to prohibit demolition or conversion of residential structures for purposes of mixed use developments, and those who will be impacted most are low-income people and communities of color.

This is especially true because by allowing such mixed use developments to replace residential structures the current draft of the Ordinance actually encourages, rather than discourages,

⁴ On top of these egregious practices, the City has a pattern and practice of using the rent paid by existing unpermitted commercial uses (this was done for 1301-1303 Abbot Kinney and 1047 Abbot Kinney, among many others) to determine whether affordable housing must be replaced, a gross double violation of the Mello Act and a practice that the City must never allow, and yet it openly does allow it.

⁵ AMEE CHEW & CHIONE LUCINA MUÑOZ FLEGAL, POLICY LINK, FACING HISTORY, UPROOTING INEQUALITY: A PATH TO HOUSING JUSTICE IN CALIFORNIA 14 (2020), https://www.policylink.org/sites/default/files/pl_report_calif-housing_101420a.pdf.

⁶ *Id.*

⁷ See Kelly Anne Smith, *Covid and Race: Households of Color Suffer Most From Pandemic's Financial Consequences Despite Trillions in Aid*, FORBES (Sept. 17, 2020), <https://www.forbes.com/advisor/personal-finance/covid-and-race-households-of-color-suffer-biggest-pandemic-consequences/>.

displacement. With the “mixed use” loophole, developers are encouraged to demolish the building and erect a new building in its place, thus displacing families currently living in older housing stock which is always, by definition, more affordable than new units deemed “affordable” pursuant to federal and state law. It makes no sense for the City to encourage destruction of existing housing, including affordable housing, so that more lucrative commercial mixed use projects can be built in the Coastal Zone, especially when such a concept runs completely contrary to the Mello Act’s intent. This would be a boon to developers and would cause a steady stream of property owners getting richer on the backs of our existing renters in the L.A. Coastal Zones as they will be displaced when mixed use projects replace residential structures.

VI. Conclusion

We understand that the City’s priority is to increase housing, but it must be done within the confines of the law and not by allowing conversions of residential structures to mixed use, in violation of the Mello Act.

We too support mixed use developments, but only where they replace existing commercial uses and thus add housing.

The Mello Act’s purpose is to protect all housing in the Coastal Zone, as well as to protect existing and provide for new affordable housing.

For the foregoing reasons, we respectfully urge you to eliminate any and all proposed Mello Act Ordinance language that would allow for demolition or conversion of residential structures for purposes of non-residential/commercial mixed use projects, in order to comply with state law and the Settlement Agreement and to ensure the City is acting within its jurisdiction.

Sincerely,

Amy Poyer
Senior Staff Attorney

California Women’s Law Center
360 N. Pacific Coast Hwy, Suite 2070
El Segundo, CA 90245
amy.poyer@cwlc.org

Sabrina Venskus
Partner

Venskus & Associates, A.P.C.
1055 Wilshire Blvd., Suit 1996
Los Angeles, CA 90017
venskus@lawsv.com

Communication from Public

Name:

Date Submitted: 05/27/2021 08:59 AM

Council File No: 21-0013

Comments for Public Posting: Please see the attached correspondence regarding the above referenced Council File No. 21-0013.

ARMBRUSTER GOLDSMITH & DELVAC LLP

LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

DAVE RAND
DIRECT DIAL: 310-254-9025

12100 WILSHIRE BOULEVARD, SUITE 1600
LOS ANGELES, CALIFORNIA 90025

Tel: (310) 209-8800
Fax: (310) 209-8801

E-MAIL: Dave@AGD-LandUse.com

WEB: www.AGD-LandUse.com

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 respectfully 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 policies 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.

ARMBRUSTER GOLDSMITH & DELVAC LLP

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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 stylized 'D' and 'R' and a long horizontal stroke extending to the right.

Dave Rand

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