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July 13, 2022

VENICE STAKEHOLDERS ASSOCIATION LETTER IN OPPOSITION TO EXTENDED LEASE FOR BRIDGE HOUSING PROJECT

VIA ELECTRONIC MAIL

Council President Nury Martinez
Councilmember Mike Bonin
City of Los Angeles
200 N. Spring Street #475
Los Angeles, CA 90012

Re: 100 Sunset Avenue / Crisis and Bridge Housing Facility (Motion in Council File 18-0510-S2, Scheduled for August 2, 2022 City Council meeting)

Honorable Councilmembers:

I represent the Venice Stakeholders Association, a non-profit organization committed to civic improvement in the Venice neighborhood of Los Angeles. On August 2, 2022, the City Council is scheduled to consider the motion made by Councilmember Mike Bonin on June 17, 2022, to authorize the Department of General Services to negotiate and execute a new (or amend an existing) lease agreement with the Los Angeles County Metropolitan Transit Authority (MTA) for use of the former MTA bus yard at 100 Sunset Avenue in Venice as a homeless shelter. VSA opposes the continued use of the MTA property as a homeless shelter, and it thus opposes any extension of the present lease.

A. The City Approved a "Temporary" Project Lasting 3 Years.

The so-called "Bridge Housing" project was originally envisioned as – and was sold to the Venice community as – a "temporary" facility that would last no more than 3 years. In 2018, the City Council approved the original lease with MTA based on the assumption that the use would be "temporary" and that the tents and other temporary structures would be removed after 3 years, thus limiting impacts on the neighborhood to that period of time. The Venice community has had to endure this shelter and its manifold negative impacts for almost 3 years, and it should not have to continue doing so.

B. <u>The Coastal Commission Has Only Authorized the Project to Remain Until November 2022</u>.

Regardless of whether the City and/or MTA may wish to continue extending the 3-year life of this "temporary" project, the California Coastal Commission has not authorized such an extension. To the contrary, the Coastal Commission only authorized a "temporary" use lasting 3 years. In December 2018, at the request of the City and MTA, the Coastal Commission granted a "de minimis waiver" from the usual requirement of a Coastal Development Permit ("CDP") under Section 30624.7 of the Coastal Act. The waiver expressly provides that "<u>After three years of installation. the facilities shall be removed by the City within a six month period unless a CDP is issued to retain the facilities for a longer period of time</u>." (See South Coast District Deputy Director's Report for Los Angeles County for December 2018, item 5-18-1160-W (emphasis supplied) (excerpt attached as **<u>Exhibit A</u>**.)

The three-year "temporary" period as defined by the Coastal Commission is almost over. Construction of the facility began in approximately November 2019, and it was completed in February 2020. The facility was occupied immediately thereafter. Accordingly, for purposes of the de minimis waiver the "installation" of the facility commenced in November 2019, and the third year of installation will end in November 2022. Even if the "installation" were deemed to commence upon the completion and occupancy of the project, the third year would end no later than February 2023, which is only a few months away.

In order to continue maintaining the present "temporary" facilities beyond November 2022 (or, alternatively, by February 2023), the City and the Metropolitan Transportation Authority must <u>apply for, and obtain, a CDP</u> by that time. <u>If the City and MTA fail to meet this deadline, the temporary facilities must be removed within 6 months</u>. It is highly unlikely that the City can meet this deadline.

B. <u>The Proposed Shelter Requires a Coastal Development Permit From the City of Los Angeles, Which Requires a Public Hearing and is Appealable to the Coastal Commission</u>.

Under state law, a Coastal Development Permit must be obtained for any "development" within the Coastal Zone, which includes Venice Beach. (See Public Resources Code section 30600.) California Public Resources Code section 30106 broadly defines "development" as including, among other things, "on land, in or under water, the placement or erection of any solid material or structure." Courts have held that all manner of structures, no matter how small or unobtrusive, constitute "development" for purposes of the Coastal Act. <u>See</u> <u>Gualala Festivals Committee v. California Coastal Com'n</u> (2010) 183 Cal.App.4th 60, 67;<u>Georgia–Pacific Corp. v. California Coastal Comm'n</u>. (1982) 132 Cal.App.3d 678 (security fence met definition of "development" in Public Resources Code

section 30106 because it "involve[d] the 'erection' of a 'structure' on 'land,' or the 'construction' of a 'structure,' or both.").

Without a doubt, the placement (or the continued maintenance) of a homeless shelter about 2 blocks (1,000 feet) from the Venice Beach Recreation Area and the coastline – even a "temporary" one – is "development" under the Coastal Act. Therefore, a Coastal Development Permit is required. Further, because the City does not have a Local Coastal Program (LCP) certified by the Coastal Commission, the City must issue a Coastal Development Permit for all development in this zone, following a duly noticed public hearing. The determination of the hearing officer is then appealable to either the Board of Public Works or the Area Planning Commission (depending upon whether or not the project is defined by the City's ordinance as a "Public Project"), requiring a second public hearing. Finally, any aggrieved party may appeal that body's determination to the Coastal Commission, which must hold yet another public hearing. (See Los Angeles Municipal Code section 12.20.2.)

C. The Coastal Commission Should Not Have Issued a De Minimis Waiver For the Original Project Because Even a "Temporary" Shelter Had a Potential for Adverse Effects on Coastal Resources.

The Executive Director may issue "waivers from coastal development permit requirements for any development that is de minimis." (Public Resources Code section 30624.7 (emphasis supplied.) However, this authority is not a blank check. The statute defines "de minimis" narrowly, as a development that "involves no potential for any adverse effect, either individually or cumulatively, on coastal resources." (Public Resources Code section 30624.7 (emphasis supplied); see *Yamagiwa v. City of Half Moon Bay,* 523 F. Supp. 2d 1036, 1077 (N.D. Cal. 2007) ("The Coastal Commission may only grant a *de minimis* waiver when the proposed project "involves no potential for any adverse effect, either individually or cumulatively, on coastal resources ..."); see also, *Gualala Festivals Committee v. California Coastal Commission*, 183 Cal. App. 4th 60, 64, 69-70 (2010) ("temporary or de minimis activity that does not adversely impact coastal resources is characterized in the statute as "development" but may be exempted from the permit requirement.").

Notably, the statute allowing a "de minimis" waiver prohibits such a waiver if there is any potential for any "adverse effect". The statute does not require that a potential impact be significant, or that it meet some other threshold level, in order to preclude the use of a waiver. If there is any potential for any adverse effect, no matter how insubstantial, no waiver can be granted.

In light of the statutory language, the Commission has only a very limited authority to declare a development to be "de minimis" and therefore exempt from review by way of a CDP. See *Burke v. California Coastal Commission*, 168 Cal. App. 4th 1098, 1108 (2008) (court noting that the Coastal Act must be "liberally construed" to accomplish its objectives

and any exception to a statute's main purpose must be strictly construed). Consistent with this limited authority, the Commission in *Gualala* refused to grant a waiver to a proposed fireworks display, because even though temporary (lasting for just a few minutes) it had the potential to adversely affect coastal resources by discharging debris (solid and chemical waste) within the coastal zone. The Court of Appeal agreed with the Commission, over the objection of the fireworks festival committee.

The bridge housing project here was described as "temporary" when first proposed. Yet it was not temporary in the sense of a fireworks display, or a farmer's market, which lasts for only a few minutes or days and involves no placement of structures on the land. Instead, the shelter project lasted for three years. And while it did contain a single tent-like structure, this structure and others were constructed after site grading and have foundations just like more traditional buildings.

The "temporary" Bridge Housing project was not properly the subject of a de minimis waiver in the first place because there was at least some potential for some adverse effect on coastal resources. These impacts are in a host of impact categories, including parking; noise; public safety; surface water contamination; hazardous substances in soil and groundwater; traffic and aesthetics. The potential impacts of the original project were discussed at length in our December 11, 2018, correspondence to the Coastal Commission in opposition to the original de minimis waiver (attached hereto as **Exhibit B**).

D. A Second Waiver Based Upon the "Temporary" Nature of the Project Would Make a Mockery of the CDP Process.

The Coastal Commission generally does not issue multiple "de minimis" waivers for the continuation of a "temporary" project. That is why the language of the waiver itself specifically requires the City and MTA to apply for and obtain a CDP if the project is to be continued beyond 3 years.

Indeed, the primary basis for the issuance of the original de minimis waiver was that the project was to last for 3 years, and that accordingly any impacts to coastal resources would be limited to that duration. To issue successive waivers extending that already generous 3-year time frame would make a mockery of the CDP process, which is designed to evaluate the impacts of a project for its entire lifespan. The City should not even request such a waiver; much less should the Coastal Commission grant one.

E. A Second De Minimis Waiver Would Be Even More Improper Than the First Because There is Now Actual Evidence of the Shelter's Adverse Effects on Coastal Resources.

In the 2018 proceedings by the Coastal Commission, the issue was whether a future project had the potential for adverse impacts on coastal resources. Coastal Commission

staff downplayed all of these potential impacts, speculating that they would not occur, and on that basis the Coastal Commission issued the waiver.

Now that the "temporary" facility has been operating for 2-1/2 years, there is actual evidence of adverse effects from the existing and operating project. These impacts are in a host of impact categories, including parking; noise; public safety; surface water contamination; hazardous substances in soil and groundwater; traffic and aesthetics. All of these actual impacts are documented and will be placed directly at issue in the proceedings over any application by the City for a CDP and/or any request for another de minimis waiver.

Any single documented adverse effect of the existing project is sufficient, in itself, to preclude the use of a "de minimis" waiver, because a waiver can only be issued for a project that "involves no potential for any adverse effect, either individually or cumulatively, on coastal resources." (Public Resources Code section 30624.7 (emphasis supplied).)

F. Even if a Second De Minimis Waiver is Contemplated, The City and MTA Must File a Full Application for a CDP.

One might conclude that the City can avoid the entire CDP process by simply arranging for a second de minimis waiver from the Coastal Commission. However, that is not how the process works. Section 13238.1 of the California Code of Regulations provides:

> The [Coastal Commission] executive director may issue a waiver from permit requirements after review of a completed permit application. If, upon review of the application, the executive director determines that the permit requirements may be waived, the applicant shall post public notice as required by Section 13054 (d), and shall provide any additional notice to the public that the executive director deems appropriate. The executive director shall notify any person known to be interested in the proposed development of the proposed waiver. (emphasis supplied)

The City and MTA must file a full application for a CDP before the executive director of the Coastal Commission may even consider issuing a waiver. The requirements for such an application are numerous and quite detailed. (See LAMC section 12.20.2.)

G. The City Council Should Not Authorize City Staff to "Negotiate and Execute" a New Lease Unless and Until the City Has Received Either a CDP or Another Waiver From the Coastal Commission.

To our knowledge the City and MTA have not even applied for a CDP for the extension of the project's 3-year life, even though such an application must be filed even if the City intends to request a second de minimis waiver from the Coastal Commission.

Moreover, the City has a long way to go after that. Once the CDP application is filed, the project will either go through the City's own public hearing process, or else the City will seek a second de minimis waiver from the executive director of the Coastal Commission, which must be presented for approval by the Coastal Commission after a public hearing. It is distinctly possible that the Coastal Commission executive director would refuse to support a second waiver, and/or that the Coastal Commission itself would deny the waiver.

If this happens, the City would have to go through the lengthier CDP process. In that process, the outcome is also not certain. The City hearing officer could deny the CDP, or it might be denied on appeal to the Board of Public Works or the Area Planning Commission.

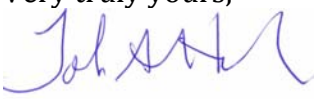
In the end, it is highly likely that the project will end up at a public hearing before the Coastal Commission, whether on a request for a waiver or on the appeal of a CDP. Of course, no one knows in advance what will happen at that final step.

The City Council should not adopt the present motion unless and until the City has either obtained a CDP (after any appeals) or received another de minimis waiver from the Coastal Commission. The motion authorizes the Department of General Services not just to "negotiate" a lease, but also to "execute" the lease, thereby committing the City to the terms of the lease, perhaps irrevocably. To even enter into negotiations before the proper permits are obtained is a waste of effort and resources. However, to actually execute the lease would be even worse: It would pre-commit the City to a burdensome lease for a large project that may, in the end, need to be immediately dismantled due to the City's inability to obtain a proper permit from the Coastal Commission within the very narrow timeframe now prescribed, i.e., by as early as November 2022 (or, at the latest, February 2023).

Adopting this motion before a CDP or waiver has been obtained is also utterly disrespectful to the neighbors of the project and the public generally, who are entitled to have an opportunity to persuade the City not to pursue to the project and/or to modify it to better address their concerns, through the vehicle of the Coastal Commission process itself.

Thank you for considering our input on this proposal. We trust that you will take our comments into consideration as you proceed.

Very truly yours,



John A. Henning, Jr.

cc: Mayor Eric Garcetti
Michael Feuer, City Attorney
Vince Bertoni, Director of Planning
Jack Ainsworth, Executive Director, California Coastal Commission
Donne Brownsey, Chair, California Coastal Commission

EXHIBIT A

CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CALIFORNIA 90802-4416
PH (562) 590-5071 FAX (562) 590-5084
WWW.COASTAL.CA.GOV

November 30, 2018

Coastal Development Permit De Minimis Waiver

Coastal Act Section 30624.7

Based on the project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Code of Regulations. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and, any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

Waiver: 5-18-1160-W

Applicants: City of Los Angeles & LA County Metropolitan Transportation Authority (Metro)

Location: 100 E. Sunset Avenue, Venice, Los Angeles, Los Angeles County (APN: 4286-015-900)

Proposed Development: Install a temporary housing facility to shelter 100 homeless adults and 54 transitional-age youth on an existing, unused, paved maintenance yard owned by Metro for a time period not to exceed three years. The proposed facilities include: one 27-foot high, 9,900 sq. ft. tension membrane (tent) structure; nine 18-foot high modular trailers for habitation totaling 6,480 sq. ft., including: 1,680 sq. ft. of hygiene trailers, 1,920 sq. ft. of storage facilities, 4,800 sq. ft. of administrative and service provider offices (including indoor meeting and programming space), a shaded centralized dining area, shaded gathering areas, an outdoor pet exercise area, bicycle racks, landscaping, and perimeter walls/fences. After three years of installation, the facilities shall be removed by the City within a six month period unless a CDP is issued to retain the facilities for a longer period of time.

Rationale: The project site is a 3.15 acre lot that is currently developed with a paved surface parking lot and one unused, on-site structure adjacent to Thornton Place. Metro currently owns the property, and previously used it for bus storage and administrative functions. Metro would continue to maintain the existing on-site building, which will not be used for the temporary "bridge" housing facilities for homeless individuals. The certified Venice Land Use Plan (LUP) currently designates the site as Limited Industry. However, LUP Policy I.C.7 states that if the subject property becomes available for re-development, priority uses shall include affordable housing (which may be provided in a mixed use residential-commercial project), and a public parking structure to improve public access. Metro has initiated a long-term planning process to re-develop the site, and has authorized the City to submit the CDP application for interim development on the site that is not to exceed three years. Although Metro's long-term plans for re-developing the site are not clear at this time, the proposed interim use of the site as a temporary bridge housing facility for homeless populations is consistent with LUP Policy I.C.7's prioritization of affordable housing. The City will be responsible for the construction, operation, and removal of the proposed temporary facilities. According to the City, the temporary facilities will serve homeless adults and youth who already live in Venice and who do not currently have vehicles.

As proposed, the project will not impede coastal access to the shoreline because the intended residents of the facilities are not expected to have vehicles. Additionally, the project will provide temporary habitation and sanitation amenities in an area where such facilities are currently overburdened (e.g. the Venice Beach public restrooms). The project includes the provision of 79 vehicle parking spaces and additional bicycle parking spaces to be provided on-site for approximately15 service providers, which leaves ample parking for visitors to the site. The City has indicated that the facility is intended to primarily provide temporary housing for

homeless individuals without vehicles, thus, it is expected that the project would have a large surplus of onsite parking adequate to avoid displacement of beach parking spaces along surrounding streets. In addition, because the project is located on a paved urban lot developed would not result in the removal of native vegetation or have any adverse impacts to sensitive habitat. The proposed 27-ft. high tent structure and 18-ft. high module trailers are below the 30-ft. flat roof height limit and the 35-ft. varied roof height limit established in the LUP and are generally consistent with the size and scale of development on surrounding parcels, including several other large structures located to the northwest. The proposed temporary facilities would be located about two blocks inland of the beach and will not block coastal or bluewater views. Therefore, for the reasons stated above, the project will not adversely impact any coastal resources, public access, or public recreation opportunities. The project is consistent with past Commission actions in the area and all Chapter Three policies of the Coastal Act, and will not prejudice the City's ability to prepare an LCP. If the City chooses to extend the project beyond the proposed three year maximum time limit, the City would need to obtain a new coastal development permit or waiver.

This waiver will not become effective until reported to the Commission at its **December 12-14, 2018** meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the California Code of Regulations. The Notice of Pending Permit shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

Sincerely,

John Ainsworth
Executive Director

Amrita Spencer
Coastal Program Analyst

EXHIBIT B

JOHN A. HENNING, JR.
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December 11, 2018

VENICE STAKEHOLDERS ASSOCIATION LETTER IN OPPOSITION TO "DE MINIMIS" WAIVER FOR BRIDGE HOUSING PROJECT

VIA ELECTRONIC MAIL

California Coastal Commission
c/o Shannon Vaughn, District Supervisor
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: "Bridge Housing" project on MTA Bus Yard Site at 100 E. Sunset Avenue (Commission File 5-18-1160-W) (Commission Hearing Date: December 12, 2018)

Honorable Commissioners:

I represent the Venice Stakeholders Association, a non-profit organization committed to civic improvement in the Venice neighborhood of Los Angeles. On December 12, 2018, your Commission will consider the Executive Director's recommendation to grant a "de minimis waiver" in lieu of a Coastal Development Permit for the so-called "Bridge Housing" project on the former site of the Metropolitan Transit Authority (MTA) bus lot at 100 E. Sunset Avenue, at which 154 homeless individuals will be housed and served.

The co-applicants for the CDP are the City of Los Angeles and the MTA. The City Council rammed the project through its process at warp speed: The report describing the project was issued November 29. The Council motion to approve the project was made on November 30. The first public hearing was held on December 5, and the second was held on December 11, 2018. Moments later, the City Council approved the project.

Like the City Council your Commission staff is rushing to judgment on this project, effectively locking out both the residential neighbors and other interested parties.

Knowing that City staff was considering some sort of project at the MTA site, and that such a project would be "development" necessitating a Coastal Development Permit (CDP), my client asked Commission staff on two occasions to thoroughly review any application by the City for a CDP – first on September 12, 2018 and then again on November 16, 2018. The City did file an application to the Commission for a CDP, but it did so at the last possible moment. Then, in order to avoid having to actually secure a CDP and conduct the necessary hearing before this Commission, the City and Commission staff, in a process conducted entirely behind closed doors, orchestrated a Commission staff recommendation of a "de minimis" waiver for the project.

Sadly, Commission staff has followed the City's lead in excluding the neighbors. First, it recommended a de minimis waiver on spurious (and inaccurate) grounds – including the assumption that the project has 79 parking spaces on the site when in fact there are only 9 spaces. Second, staff scheduled the public hearing on the waiver with only 9 days' advance notice by mail to the neighbors, which is less than the absolute minimum 10 days' notice required for such a hearing under the Commission's regulations and statutory law. (Mailing envelopes from several neighbors, showing the mailing date of December 3, 2018, are attached as **Exhibit A**.) Third, staff waited until December 5, 2018 – just 7 days before the hearing – to post the Deputy Director's report, which describes the grounds for the proposed waiver, on the Commission's website. Fourth, when my client objected to the late notice and requested additional time to submit this letter for circulation to the Commission, staff refused the request.

Then, remarkably, literally on the eve of this hearing, and just hours after the City Council had admitted in open session that the project would, in fact, have as little as 20 parking spaces, Commission staff posted an "Addendum" to its website. In it, staff argued, for the first time, that even 20 spaces would be sufficient to justify a waiver, and made new arguments about the adequacy of the notice given to neighbors.

Venice residents, having already been the victims of a sneak attack by their own City Council, should not be subject to similar tactics at the hands of this Commission. The neighbors deserve not eleventh-hour "addendums," but rather, full consideration by the Commission of this project and its impacts. A "de minimis" waiver is simply inconsistent with full review. Such a waiver is only available for projects that demonstrably have "no potential for any adverse effect, either individually or cumulatively, on coastal resources." (Public Resources Code section 30624.7 (emphasis supplied).) Typical applications of the waiver are for things like weekend fireworks shows and farmers' markets, which generally do not involve "development" at all, and which can be clearly shown to have no potential for adverse effects. All other projects require a CDP.

This project has far more potential to impact coastal resources than the dozens of single family homes in Venice and elsewhere, for which the Commission staff routinely requires a CDP. It involves grading and other construction activities and would add

numerous new structures on a largely undeveloped site. It would house and serve 154 people just steps from residences on three sides. The structures are as much as 27 feet tall and would be easily visible on surrounding streets.

The residents, visitors, staff, service providers and vendors associated with the project would inject substantial new traffic and parking demand onto streets just a block from the beach, which are shared by many of the millions of people who visit Venice Beach each year. The Venice Coastal Zone Specific Plan, which is part of the City's General Plan, and which is attached as **Exhibit B**, would require a minimum of 111 parking spaces for a hotel with 154 rooms and an eating area of 3,420 square feet . Such a hotel would not require the scope of services that a homeless shelter provides. Yet, there are only 9 parking spaces on this site. Commission staff has repeatedly acknowledged that public parking supply is an important issue affecting public access to the coast, and that parking supply in Venice is severely limited. (See, e.g., Commission staff report in Appeal No. A-5-VEN-16-0041, dated June 23, 2016, attached as **Exhibit C**, at pp. 9-11(staff noting the "very limited parking supply" in Venice and reiterating that "Section 30252 of the Coastal Act requires that new development provide adequate parking facilities to maintain and enhance public access to the coast."). Several neighbors of the project have described the extreme shortage of on-street parking in the area in their letters to the Commission, which are attached as **Exhibit D**.

Although the City predicts that the shelter project will reduce homeless encampments in Venice or the City of Los Angeles generally, there is a real potential that this particular project will act as a magnet for more homeless encampments in the immediate area. More encampments would negatively affect stormwater and urban runoff to the ocean just one block away, as discussed in a recent letter to the Commission from attorney Jennifer Novak, attached as **Exhibit E**. Such impacts directly implicate section 30231 of the Coastal Act, which requires that "coastal waters" be protected for purposes of marine life and human health, "through, among other means, minimizing adverse effects of waste water discharges and entrainment [and] controlling runoff. Ms. Novak also wrote a letter to the City Council describing the potential for contamination of the soil under the site by underground storage tanks associated with the former MTA bus yard, which contamination has the potential to adversely affect the health of residents and staff. This letter is attached as **Exhibit F**.

More encampments would also affect public safety, including for coastal visitors. A disproportionate number of homeless persons suffer from mental or substance abuse problems and some in Venice have been observed subjecting residents and visitors alike to harassment, property crimes, and even physical assault. Several neighbors commented on these problems during the recent City Council hearings, and some of their letters to the City Council are attached as **Exhibit G**. Crimes and harassment of coastal visitors directly implicate section 30001.5 of the Coastal Act, which provides that the basic goals of the Act are to "(c) Maximize public access to and along the coast and maximize public recreational

opportunities in the coastal zone." Moreover, section 30253 of the Coastal Act provides that new development shall "Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses." Venice Beach is just such a "popular visitor destination point," unique in all the state, and a project that would undermine public safety by acting as a magnet for homeless encampments is accordingly inconsistent with the Coastal Act. The neighborhoods immediately adjoining Venice Beach are similarly popular with visitors, and also deserve protection.

The largest structure in the project is essentially a large permanent tent and several areas are entirely outdoors, including a large eating area and a kennel for residents' pets, so noise impacts will spread far beyond the site, affecting residents and visitors alike. An independent consultant, Dale La Forest and Associates, has evaluated these impacts. His report is attached as **Exhibit H**. For the same reason that public safety impacts to visitors should be considered under the Coastal Act, so should noise impacts.

Finally, like any significant development in the Coastal Zone, the aesthetic impacts of the project must be considered under the Coastal Act. (See Public Resources Code section 30251 ("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 be visually compatible with the character of surrounding areas."). The potentially adverse impacts of the proposed temporary structures, including the unusual tent-like dormitory, should be considered before any CDP is issued.

VSA recognizes that homelessness is an increasingly serious problem in the City, and that creative solutions are needed. Moreover, VSA does not categorically oppose the temporary use of the MTA bus yard as a stop-gap shelter for homeless persons. Such a facility may be appropriate if it truly does replace existing Venice encampments and prevents their re-establishment in the future. But however noble may be the intent behind the project, the Commission has a responsible to conduct a full and fair review of the project. Accordingly, the Commission should refuse to allow a de minimis waiver and require a Coastal Development Permit.

A. Project Description.

The 3-acre former MTA bus lot is one block from the beach and within the Coastal Zone. The City plans to construct numerous buildings which will house 154 persons along with various types of support, professional and security staff to serve them, as well as other homeless persons in the area. While complete plans have not been released, the rendering below, which was provided by City staff at the October "town hall" meeting, reflects the general design.

Promotional Slide Showing Bird's Eye View of Project

The December 7, 2018, report by the City's Department of Public Works, portions of which are attached as **Exhibit I**, reveals that the following will be constructed on the site:

1. A large semi-permanent "tent" building which will house 100 adults in a dormitory setting.

2. Six manufactured modular buildings that will house another 54 teenagers and young adults, separated by sex.

3. Separate buildings for restrooms, showers and laundry facilities.

4. Several additional buildings to house the offices of social service staff, housing locaters, security personnel, and those who will provide intake services, psychological counseling, job training, resume preparation, and skills training.

5. A large (3,420 square foot) outdoor dining area.

6. A large (1,920 square foot) outdoor kennel for residents' pets.

7. A facility for creation of public art.

8. A central dining facility, including food preparation facilities for 154 residents and staff.

9. A storage building for the possessions of the 154 residents.

10. Just nine (9) parking spaces.

The project is described as "temporary" only because it nominally lasts for three years and because the largest building appears to be "tentlike" and other, smaller buildings are premanufactured, and because the City contends it will last for three years. However, this is not a temporary project akin to a fireworks show or a farmer's market or a Christmas tree lot, which typically last for only a few hours, days or weeks.

B. The City Never Thoroughly Reviewed the Project in a Public Process.

Unlike virtually all projects that reach the Commission from the City, this project did not undergo a thorough review including public hearings before the application was made to the Commission – hearings which, as a matter of policy, the Commission staff generally requires before an application for a CDP can even be made. Nor was the Venice Neighborhood Council, a certified neighborhood council under the City's Charter, ever consulted about the project.

The City's "process," if it can even be called that, went like this. On June 29, 2018, the City Council passed a motion to study the "feasibility" of the MTA site. No feasibility report was ever produced pursuant to this motion. Instead, during the summer and fall of 2018, City politicians favoring the project began to release some details of a proposal. On October 17, 2018, the City held a "town hall meeting" at a local school, at which some details of the project were disclosed. While this was going on, the City's Department of Public Works, in a process utterly concealed from neighbors and the public, was busy commissioning a series of reports by Parsons Corporation, an outside consultant, to buttress a claim that that the project is "categorically exempt" from the provisions of the California Environmental Quality Act (CEQA).

On November 29, 2018, the Department of Public Works released a 481-page report finally describing the project in detail and containing numerous detailed studies by Parsons. Until this report was released, virtually all of the information in it was completely unknown to the public.

The next day, November 30, 2018, Mike Bonin, the 11th District Councilmember, made a motion in Council to approve and fund the project. The Council then scheduled this motion for a public hearing before the Homelessness and Poverty Committee just five days later, on December 5, 2018. Just six days after that, on December 11, 2018, the City Council held its final hearing, approved the Department's report and approved and funded the project. It all happened in the blink of an eye.

My client was aware that this and other so-called "Bridge Housing" projects were being railroaded through the City's process without concern for their potentially adverse impacts. In the hope that this Commission would not follow the City's example, well before the final project was proposed we wrote to Commission staff twice – on September 12, 2018 and November 16, 2018 – and asked it to perform full review of any CDP. Yet

apparently in late November, without the knowledge of my client or the public, the City filed an application to the Commission for a CDP. Then, in order to avoid having to actually secure a CDP and conduct the necessary hearing before this Commission, the City, working entirely behind closed doors and with no input from the public, orchestrated a Commission staff recommendation of a "de minimis" waiver for the project.

C. The December 12 Hearing Cannot Go Forward Because Commission Staff Did Not Give 10 Days' Notice of the Hearing.

In apparent haste to schedule this hearing in December and thereby satisfy the City's lightning fast timeline, the Executive Director mailed notice of the December 12 public hearing on December 3, 2018, just nine calendar days, and only 7 working days before the hearing.[1] This is less than the minimum 10 days' notice required for a hearing of this type, and is in direct violation of Commission regulations and statutory law. Moreover, the Deputy Director's report, which describes the proposed waiver, was not posted until December 5, 2018, just 7 calendar days and 5 working days before the hearing, even though we pleaded with Commission staff to post it sooner.

The net effect of these actions by Commission staff is that my client and the numerous immediate neighbors of the project did not know that a waiver was even proposed, much less the grounds for the waiver, until less than a week before the hearing. My client and neighbors were severely prejudiced by these delays. First, they were unable to meet the Friday, December 7, 2018, deadline specified in the notice for submissions to the Commission – a deadline that was only a day or two after the notices were received by neighbors and just two days after the Deputy Director's report was posted. (Indeed, my client in particular was unable to prepare this very letter sufficiently far in advance of the December 12 meeting to have a full impact on the Commission members, and Commission staff even refused our request to transmit this and other "late" correspondence to the Commission members before the hearing.) Second, neighbors and my client were effectively precluded from arranging meetings and other ex parte communications with individual Commissioners before the hearing date. Third, with so little time to prepare neither my client nor other neighbors had any opportunity to retain experts to provide relevant comments on the project.

The Executive Director is required to give 10 day's minimum notice by mail for any hearing concerning a Coastal Development Permit "to all persons known by the executive director to have a particular interest in the application, including those specified in [14 CCR] section 13054(a)." (See 14 CCR 13063(a).) Section 13054(a), in turn, specifies (among other things) "all residences, including each residence within an apartment or condominium complex, located within one hundred (100) feet (not including roads) of the

[1] Commission staff's contention in the Addendum that "hearing notices for this project were mailed to all parties within a 100-foot radius of the project site on December 3, 2018- nine working days before the scheduled hearing" is simply wrong, unless "working days" include Saturdays and Sundays.

perimeter of the parcel of real property of record on which the development is proposed." See also *N. Pacifica LLC v. California Coastal Commission*, 166 Cal. App. 4th 1416, 1430–31 (2008) (noting that Government Code section 11125(a) requires Commission to provide 10 days' advance notice of hearings in writing to the public and all interested persons).

The notice reflects a December 3 date, and all notices to neighbors of which we are aware bear a postmark and/or a postage meter dated December 3 at the earliest. December 3 is only 9 days from December 12. On this basis alone, the public hearing should be cancelled immediately, or alternatively, continued to the Commission's next meeting. Otherwise, any permit granted by the Commission must be immediately revoked. See *Oceanside Marina Towers Assn v. Oceanside Community Development Commission*, 187 Cal. App. 3d 735, 742 (1986) (citing to former 14 CCR 13054(c) (now 14 CCR 13054(e) ("Under the applicable administrative regulations, the Coastal Commission is required to revoke a permit previously issued 'if it determines that the permit was granted without proper notice having been given.'").

The City's posting of notice on the site is an additional requirement of section 13054(d), which provides that "At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission." In the December 11 Addendum, Commission staff contends that notice of the application was posted by the City on November 16, 2018, and that this posting, in conjunction with the notice of the hearing mailed 9 days before the hearing, "was an adequate level of noticing for this hearing on a waiver."

As Commission staff surely knows, the applicant's City's posting of an obscure notice on a telephone pole near a largely abandoned project site is not necessarily something likely to be observed by residents of the area, who would have no particular reason to even be passing by the site. Moreover, even assuming the notice was posted on November 16, on its face it merely concerns the filing of an application for the CDP. It does not does not even mention a public hearing, much less does it give notice of a public hearing on a particular date.

The posting regarding the filing of an application is a separate requirement. It is no substitute for Commission staff providing a minimum of 10 days' advance notice by mail of the public hearing itself, which is an event entirely separate from the filing of the application, and an event of which the public is legally entitled to notice.

Nor is it in any way relevant that the public hearing concerns "a waiver" rather than a full-fledged Coastal Development Permit. The Commission is obligated to conduct a public hearing precisely because the staff is recommending a complete end run around the usual requirement of a CDP. There is no basis whatsoever for staff's apparent view that the public deserves something less than full statutory notice because "only" a waiver is at issue.

The Commission staff's failure to mail the hearing notice, or to post its Deputy Director's report on the Commission's website at least 10 days before the hearing also violates Government Code section 11125(a), which provides, in relevant part, that "[n]otice shall be given and also made available on the Internet at least 10 days in advance of the meeting." See *N. Pacifica LLC, supra*, 166 Cal.App.4th at 1430–31. The failure to post the Deputy Director's report in a timely fashion prejudiced my client and the neighbors, because until the Deputy Director's report was posted on December 5, the public had no notice whatsoever of the intended action or the grounds therefor.

The remedy for these failures is a writ of mandate commanding the Commission to set aside its approval of the project. See *Oceanside Marina, supra,* 187 Cal.App.3d at 743. However, it should not have to come to that. The Commission should simply refuse to grant the waiver.

D. A De Minimis Waiver is Improper Because There is a Potential for Adverse Effects on Coastal Resources.

The Executive Director may issue "waivers from coastal development permit requirements for any development that is de minimis." (Public Resources Code section 30624.7 (emphasis supplied.) However, this authority is not a blank check. The statute defines "de minimis" narrowly, as a development that "involves no potential for any adverse effect, either individually or cumulatively, on coastal resources." (Public Resources Code section 30624.7 (emphasis supplied); see *Yamagiwa v. City of Half Moon Bay,* 523 F. Supp. 2d 1036, 1077 (N.D. Cal. 2007) ("The Coastal Commission may only grant a *de minimis* waiver when the proposed project "involves no potential for any adverse effect, either individually or cumulatively, on coastal resources ..."); see also, *Gualala Festivals Committee v. California Coastal Commission*, 183 Cal. App. 4th 60, 64, 69-70 (2010) ("temporary or de minimis activity that does not adversely impact coastal resources is characterized in the statute as "development" but may be exempted from the permit requirement.").

Notably, the statute allowing a "de minimis" waiver prohibits such a waiver if there is any potential for any "adverse effect". The statute does not require that a potential impact be significant, or that it meet some other threshold level, in order to preclude the use of a waiver. If there is any potential for any adverse effect, no matter how insubstantial, no waiver can be granted.

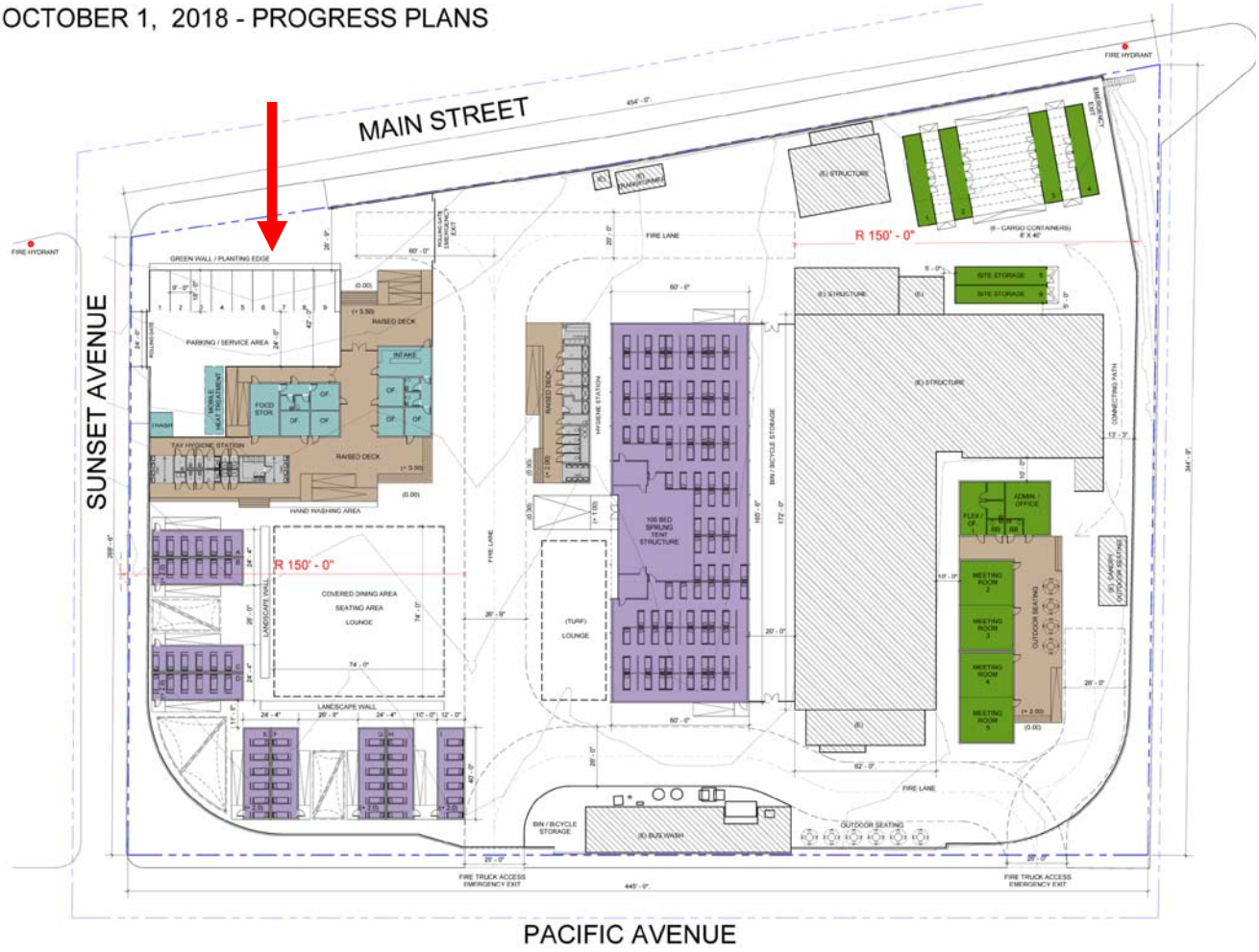
In light of the statutory language, the Commission has only a very limited authority to declare a development to be "de minimis" and therefore exempt from review by way of a CDP. See *Burke v. California Coastal Commission*, 168 Cal. App. 4th 1098, 1108 (2008) (court noting that the Coastal Act must be "liberally construed" to accomplish its objectives and any exception to a statute's main purpose must be strictly construed). Consistent with this limited authority, the Commission in *Gualala* refused to grant a waiver to a proposed fireworks display, because even though temporary (lasting for just a few minutes) it had

the potential to adversely affect coastal resources by discharging debris (solid and chemical waste) within the coastal zone. The Court of Appeal agreed with the Commission, over the objection of the fireworks festival committee.

Here, the Bridge Housing project is not properly the subject of a de minimis waiver because there is at least some potential for some adverse effect on coastal resources.

E. The Staff Report Gravely Understates the Parking in the Project.

Beach parking has long been acknowledged as a substantial constraint on coastal access. Yet this 154-bed facility, with dozens of employees and numerous outside service providers and vendors, has only 9 parking spaces.



Project Site Plan (from 11/29/18 Department of Public Works Report)

The City's site plan, included in its report, clearly depicts the 9 parking spaces, which are located at the far northwest corner of the site, and confirms that there is no room elsewhere on the site for additional spaces. (See Narrative (Exhibit I), at Attachment A.)

The City's report appears to conflict with the site plan, stating in two places that there are 111 parking spaces on the site. (See Notice of Exemption (Exhibit I); Categorical Exemption Narrative (hereinafter "Narrative") (Exhibit I), at pg. 1.) However, elsewhere the report confirms that there are, in fact, only 9 parking spaces on the site. The traffic section of the Project Description states that "Nine parking spaces are proposed for on-site parking." (See Narrative at pg. 16.) The Traffic Technical Memorandum prepared by Parsons for the City similarly states that "Nine parking spaces are proposed for the Sunset Avenue Bridge Housing project. No parking would be removed or displaced." (See Technical Memorandum (Exhibit I) at pg. 4.)

Yet inexplicably, the Deputy Director's report says the site has 79 spaces. (Deputy Director's Report, De Minimis Waiver 5-18-1160-W, at pg. 1.) The report erroneously describes the parking situation as follows:

> According to the City, the temporary facilities will serve homeless adults and youth who already live in Venice and who do not currently have vehicles. As proposed, the project will not impede coastal access to the shoreline because the intended residents of the facilities are not expected to have vehicles. . . . The project includes the provision of 79 vehicle parking spaces and additional bicycle parking spaces to be provided on-site for approximately 15 service providers, which leaves ample parking for visitors to the site. The City has indicated that the facility is intended to primarily provide temporary housing for homeless individuals without vehicles. Thus, it is expected that the project would have a large surplus of onsite parking adequate to avoid displacement of beach parking spaces along surrounding streets. (Deputy Director's Report, De Minimis Waiver 5-18-1160-W, at pp. 1-2 (emphasis supplied).)

Relying in part on this grave misunderstanding of the project's parking, the Deputy Director concludes that "the project will not adversely impact any coastal resources, public access, or public recreation opportunities". (Deputy Director's Report, De Minimis Waiver, at pg. 2.) Yet given the lack of sufficient parking to serve hundreds of residents, visitors, staff, service providers and vendors, there is no substantial evidence to support this conclusion. See *McAllister v. California Coastal Commission*, 169 Cal.App.4th 912, 941 (2008), as modified (Jan. 20, 2009) ("the Commission has a general duty to support a decision to grant or deny a permit with written findings. . . . The purpose of requiring written findings is to record the grounds on which the decision of the Commission rests and thus render its legality reasonably and conveniently reviewable on appeal.")

F. The City Council's Last-Minute Revision of the Project to Include "At Least 20" Parking Spaces is Too Little, Too Late.

On the eve of the Commission's hearing, the City Council effectively conceded that the site does, in fact, have only 9 parking spaces, and that this is woefully inadequate and nowhere near the 111 spaces asserted in the City's report or the 79 spaces relied upon by the Commission's Deputy Director in his report. After the close of the final public hearing on December 11, just before the Council vote, and with no opportunity for public review or comment, Councilmember Mike Bonin, the main force behind the shelter project, hastily added an amendment to the Council motion requiring that "at least 20 parking spaces" be provided for the project and directing staff to amend its report and update the project site plan to reflect these 20 (or more) spaces.

This change is too little, too late. The Commission hearing is on December 12, and the only project plans at issue are the plans already submitted to the Commission, which depict only 9 spaces. Moreover, even if the site could somehow accommodate 20 parking spaces, this number of spaces is barely more adequate to serve a 154-bed facility than 9 spaces, as discussed in the following section of this letter.

G. There is No Basis for a Finding That Impacts to Beach Parking Will be Avoided Because Residents "Are Not Expected to Have Vehicles."

In his report to the Commission, the Deputy Director relies heavily on a representation apparently made to the City, to the effect that parking would be unnecessary because the targeted homeless residents "do not currently have vehicles" and "are not expected to have vehicles." (Deputy Director's Report, De Minimis Waiver 5-18-1160-W, at pg. 1).) On this basis, the Deputy Director strongly implies that the lack of parking demand by residents means that fewer spaces would be needed and that accordingly the parking supply for coastal visitors would be unaffected by the project.

There is no basis whatsoever for any such finding. In its 481-page report in support of a categorical exemption, the City is completely silent on the question whether homeless persons with vehicles would be admitted to the facility, and presumably they would be. Indeed, while it may be counterintuitive to some, in auto-centric Los Angeles many homeless persons do, in fact, own vehicles. This is for many reasons, among them that vehicles are the place where such persons frequently live and sleep. In Venice in particular, so many homeless people own vehicles that the presence of such vehicles has become a primary driver of demand for on-street parking spaces, forcing out other residents and coastal visitors alike. These conditions are reported at length in various letters to the Commission regarding parking (Exhibit D).

The Commission may not rely on a mere allegation by the applicant City that the residents of this large shelter cannot possibly have cars. Without a permit condition that prohibits residents owning cars, and a legitimate means of enforcing such a condition, for

purposes of evaluating impacts to public parking supply it must be assumed that residents will park cars near the facility just like everyone else.

H. Commission Staff's Eleventh-Hour "Addendum" Allowing a Reduction From 79 Spaces to 20 Spaces Ignores the Effect of The Reduction on Coastal Parking.

Just hours after the City Council acted to approve the project on December 11, and on the very eve of this hearing, Commission staff suddenly posted an "Addendum" on its website, in which it conceded that because of an "unintentional error by the City," there would, in fact not be 79 parking spaces on the site. Staff should have responded to this veritable bombshell by withdrawing the item from the December 12 agenda, so that at a minimum the Commission staff and the public could consider this new information. Instead, Commission staff doubled down on the project. With no basis whatsoever in the record – or even in common sense – staff made the following remarkable assertion:

> As proposed, the City will provide for 20 parking spaces onsite. Although the correct number of parking spaces (20) is less than the previously identified number of proposed spaces, the proposed project provides sufficient parking for the staff and also provides additional spaces for guest parking spaces as necessary. In the unlikely event that the facility does require additional parking, the City has indicated that it can accommodate additional parking onsite. (Addendum at pg. 1.)

In an attempt to buttress this wild speculation, Commission staff then went on to speculate further about the likelihood that residents would not have cars:

> Specifically, the City identifies individuals through consultations with local social service agencies, that currently direct targeted outreach, mental health, career, and addiction support services to nearby encampments. The social service providers will target outreach and prioritize shelter space for those who are most vulnerable, and such individuals are typically those who have exhausted all other means of potential shelter, such as vehicles, and are left without access to such resources. Therefore, it is expected that the individuals served by the Bridge Home Venice facility will not be homeless individuals who own and/or dwell in their vehicles, but rather those who are currently encamped on nearby sidewalks, in alleyways, or along areas such as the boardwalk. (Addendum at pp. 1-2.)

This last-minute Addendum is merely a post-hoc rationale for a project that staff evidently supports. It is also an affront to neighbors who deserve a transparent process. Nothing in the Addendum is substantial evidence supporting a finding that the residents and others using the project will require only 20 parking spaces, as would be required for a de minimis waiver. To the contrary, as discussed in greater detail later in this letter, by any measure even 20 spaces is drastically less than is likely to be needed for a 154-bed shelter

providing food and numerous services to its residents.

Moreover, staff's assurance that "In the unlikely event that the facility does require additional parking, the City has indicated that it can accommodate additional parking onsite" improperly defers the question of whether the parking is adequate to some date in the future, after the project has already been built. This directly contradicts the Commission's long-held policy that new projects must verifiably demonstrate parking on-site or nearby before a permit is issued.

I. There is No Substantial Evidence to Support the Other Conclusions in the Deputy Director's Report.

The Deputy Director's conclusion that "the project will not adversely impact any coastal resources, public access, or public recreation opportunities" is not supported by substantial evidence in the record – not just as to parking, but as to all manner of potential impacts. The Deputy Director provides a 2-paragraph rationale for this conclusion which consists of nothing more than conclusory statements. Meanwhile, this letter and other correspondence to the Commission describes the many potential adverse impacts on matters other than parking, including noise; public safety; surface water contamination; hazardous substances in soil and groundwater; traffic and aesthetics.

In considering potential impacts to coastal resources, the Commission should recognize at the outset that this "temporary" shelter project is unusual in numerous respects, and thus has an even greater potential to generate adverse effects. First, while the project is described as "temporary," it is not temporary in the sense of a fireworks display, or a farmer's market, which lasts for only a few minutes or days and involves no placement of structures on the land. The shelter project lasts for three years. And while it does contain a single tent-like structure, this structure and others will be constructed after site grading and will have foundations just like more traditional buildings.

Second, the project is a type of facility that has little precedent in the City of Los Angeles. As the City itself admits, there are only two other similar facilities even approved in the City (one 15 miles away and one 8 miles away), and neither is operating yet. (See Narrative at pg. 46.) Therefore, there is no operational experience whatsoever for a homeless shelter of this type, much less one characterized by a tent-like primary structure and large outdoor recreation and eating facilities and an outdoor kennel.

Third, the stated purpose of the facility is to replace encampments in the Venice area and elsewhere in Council District 11 by providing homeless persons with a place to live. However, despite the best intentions of City politicians and City government, existing encampments in Venice and elsewhere may continue despite the existence of the facility. Moreover, because the proposed facility would not be restricted only to the residents of existing encampments, but can be used by any homeless person requiring shelter, the

facility is likely to act as a magnet for homeless persons throughout the City of Los Angeles and beyond.

Fourth, regardless of its size, there is no assurance that the facility will be large enough to accommodate all persons seeking housing or other services. Instead, it may become a magnet for new encampments in the immediate vicinity, as would-be users of the facility vie for housing and other services (perhaps unsuccessfully) and then choose to camp on nearby City streets or on private property.

It is apparent on its face that the proposed facility may have an adverse impact on the following environmental factors, each of which is a separate ground for denying a de minimis waiver.

1. Parking.

As documented by the Commission staff and residents alike, the site is located in a parking-starved area only one block from the Venice Beach Recreation Area, which is visited by millions of people each year. Because of restrictions by the California Coastal Commission, there are no posted restrictions on parking except for weekly street sweeping. Thus, any increased demand for on-street parking spaces is a potentially significant adverse impact that must be evaluated by the Commission.

Like the Deputy Director's report, which erroneously assumes there will be 79 parking spaces on the site, the City's report severely overstates the available parking on the site. The City's Notice of Exemption says that "there are 111 parking spaces on the site." (Notice of Exemption (Exhibit I.) The Project Description section of the City's Categorical Exemption Narrative makes the same allegation. (Narrative (Exhibit I) at pg. 1.) Yet the Traffic section of the Narrative concedes that "Nine parking spaces are proposed for on-site parking." (Narrative at pg. 16.) The Traffic Technical Memorandum prepared by Parsons makes the same assertion. (See Technical Memorandum at pg. 4.) Finally, as shown on the site plan depicted in the preceding section, there are only 9 parking spaces on the site and no room for more parking. (Narrative, Attachment A (Project Description Information).)

The Narrative provides no analysis of the adequacy of these nine spaces, but instead merely asserts that "No parking would be removed or displaced." The Narrative does not assert that 9 parking spaces are sufficient for 154 residents, some of whom will surely own vehicles, plus 11 estimated employees during weekday shifts, as well as numerous service providers (estimated by Commission staff at 15), vendors, visitors and others.

As discussed elsewhere in this letter, the City Council has effectively conceded that the site does, in fact, have only 9 parking spaces, by adding a last-minute amendment to the Council motion requiring that "at least 20 parking spaces" be provided for the project.

However 9, or even 20, spaces cannot be adequate for such a project under any conceivable measure. The Venice Coastal Zone Specific Plan ("VCZSP"), adopted by the City Council in light of actual parking conditions in Venice, contains no specific parking calculations for homeless shelters. However, for a hotel, the VCZSP requires at least one parking space per guest room for the first 30 rooms, one space for each two guest rooms for the second 30 rooms, and one space for each three guest rooms for each room in excess of 60 rooms. (VCZSP (Exhibit B) at pg. 25.) If beds in the shelter are treated as guest rooms, by that measure 154 beds would require 76 spaces (30 + 15 + 31). The VCZSP also requires one additional space "for each 100 square feet of floor area used for consumption of food or beverages, or public recreation areas." (VCZSP at pg. 25.) Here, the outdoor eating area alone is 3,420 square feet, which would require 35 spaces if it were the indoor eating area of a hotel. That is a total of 111 spaces. In the alternative, a "Boarding and Lodging House" would require "two spaces for each three guest rooms." (VCZSP at pg. 26.) For 154 guest rooms, that would be 102 spaces. With an additional 35 spaces for the eating area, that is a total of 137 spaces. None of this makes any allowance for parking relating to the offices or other services on the site necessary to serve the homeless residents' many needs, even though these offices and services will inevitably be staffed by employees, service providers and vendors who drive their cars to the site.

Moreover, leaving aside any City code parking requirement, it is obvious to even a layperson that 9 spaces, or even 20, could not possibly accommodate the needs of this project. First, the 11 employees themselves will likely consume most of the spaces, at least during the day, leaving only a handful for 154 residents, 15 or more service providers, vendors and other visitors to the site. Indeed, Parsons estimates 196 daily vehicle trips resulting from the project. This number, even though unrealistically low, strongly indicates that there will be at least dozens of individual cars coming and going from the site each day, all of which will need to park at the site.

Given the lack of on-site parking, persons working at, residing in or otherwise using the facility will be forced to use scarce on-street parking. A disproportionate share of these vehicles will be trucks, vans, campers, and recreational vehicles (RVs) that are commonly used by homeless persons for shelter, and which take up even more room on the street than passenger cars. All of this should be thoroughly reviewed by the Commission.

2. Noise.

The City attaches a noise study to the narrative and concludes that noise from construction and operation of the facility would not create a significant impact on residents. In fact, as discussed in the report by Dale La Forest & Associates (Exhibit H), and as confirmed by observations of existing conditions made by residents as reflected in their recent letters (Exhibit G), project noise would significantly impact nearby residences in numerous ways, including the following:

(a) Construction activities, some of which would take place just 50 feet from residences, would result in sustained exceedance of the City's noise thresholds.

(b) Operation of this highly unusual facility with a large tent-like dormitory housing 100 people, large outdoor eating and recreation areas, and an outdoor kennel for pets (including dogs), and operating 24 hours a day, would subject residential neighbors to constant noise, especially at night when ambient noise is lowest. The project is located in a residential area which is generally quiet at night. As illustrated by letters to the Council from numerous neighbors, residents are already assaulted by frequent noise from encampments and individuals near their homes during the otherwise quiet nighttime hours, and their sleep is frequently disrupted as a result. No expert is necessary to see the potential for the facility's residents, staff, other people attracted by the facility, and their vehicles and pets to subject residential neighborhoods to even greater noise impacts, especially late at night.

(c) The facility has the unusual quality of attracting homeless persons to the area, who are seeking services and/or congregating with persons in the facility. These persons and their encampments have the potential to spread noise impacts far beyond the site itself, into other nearby residential neighborhoods.

3. <u>Public Safety</u>.

By acting as a magnet for homeless persons, some of which will be seeking services, visiting shelter residents, or simply congregating near the facility, this project has an unusually high potential to increase public safety hazards such as littering, release of sewage into alleys and storm drains, and property or personal crimes, which would most intensely affect the immediately adjacent residential neighborhoods. These conditions are already severe in this neighborhood, as reflected in the numerous letters to the Council and the Commission from neighbors (Exhibit G).

4. <u>Surface Water Contamination</u>.

As discussed in a recent letter to the Commission from attorney Jennifer Novak (Exhibit E), homeless encampments are a well-documented, and increasingly difficult to control, source of fecal indicator bacteria to ocean waters. The Bridge Housing Project's proposed location sits only blocks from the coast. Storm drains in this area discharge directly into Santa Monica Bay during wet weather, picking up whatever material has accumulated on the streets and sidewalks. Yet the City in its report has not considered

the potential effects of trash, fecal coliform, and other pollutants associated with a dense homeless population on the City's municipal separate storm sewer system discharges.

According to the City of Los Angeles' Stormwater Program, Santa Monica Bay's beaches are impaired by pollutants such as trash and bacteria and the City is subject to Total Maximum Daily Loads (TMDLs) for nearshore debris and wet weather bacteria. The project proposal includes no provision to prevent further impairments caused by an increased concentration of individuals living near the Site. Nor does it acknowledge the growing correlation between the growing homeless population and the amount of human waste discharged to receiving water.

The project has an unusual capacity to attract homeless encampments to this coastal area, with the resulting impacts on surface water discharges.

5. <u>Hazardous Substances in Soil and Groundwater</u>.

In the Notice of Exemption and supporting narrative, the City's report makes only a cursory mention of seven underground storage tanks on the site, associated with the previous use as a bus yard. (Narrative at pg. 54.) In fact, as discussed in a separate letter to the City Council by attorney Jennifer Novak (Exhibit F), these tanks have the potential to contaminate soil and groundwater and to subject the residents of the project to health hazards. This potential impact is an unusual circumstance, especially given the conversion from an industrial use to a residential facility, and it should be fully studied.

6. <u>Traffic</u>.

This is an extraordinarily dense and congested neighborhood, whose narrow streets are shared by residents and the millions of people who visit Venice Beach each year. By Parsons' own estimate, the project will generate 196 new car trips per day. (See Traffic Technical Memorandum (Exhibit I) at pg. 4.) However, that number is unrealistically low. First, it assumes only 1.27 daily trips for each of the 154 residents, on the theory that the proper trip generation rate is the Los Angeles Department of Transportation (LADOT) rate for "permanent supportive housing/special needs." (Traffic Memorandum at pg. 4.) This very low trip generation rate assumes very little vehicle use by the residents themselves. It does not take account of the fact that many homeless persons have cars or RVs, and will surely use them while staying at the facility. The rate also does not consider the broad scope of services being provided at this particular facility.

The Parsons report also estimates that there will be 11 employees during weekdays, plus 6 in the evening and 3 during the "swing shift" and 2 to 4 on weekends. (Traffic Memorandum at pg. 2.) This appears to be a drastic underestimation. In fact the project will require management staff, intake staff, social service counselors, housing locaters, psychological staff, on-site security personnel, teachers and employment coaches, custodial

staff, kitchen staff, kennel staff, and storage facility staff. It is more reasonable to assume that at least 50 people (either employees or outside service providers or vendors) will be working at the site during daytime hours.

Moreover, even if the low estimates of employees and total daily trips are correct, the Parsons report underestimates peak hour trips resulting from those factors. The report assumes just 9 trips in at the AM peak hour and 8 trips out at the PM peak hour. (Traffic Memorandum at pg. 4.) Yet it is only reasonable to assume that the 11 daytime employees will each enter during the AM peak hour and will leave at the PM peak hour. That is 11 trips during each peak hour, just for employees. In addition to this, some percentage of other trips by service providers, vendors and the residents themselves should be assumed to occur during the peak hour. The Commission should fully consider these traffic impacts.

7. Aesthetics.

New encampments attracted by this unusual homeless-serving facility would negatively affect the visual quality of this seaside neighborhood, which is enjoyed not just by residents but by many of the millions of people who visit the Venice Beach Recreation Area each year. The adverse aesthetic impacts of existing encampments in Venice are described in the comments by neighbors to the City Council and have also been reported widely in the press. These impacts should be fully studied.

J. The City Proposes Categorical Exemptions Which, On Their Face, Do Not Apply to the Project.

The City has attempted to circumvent its own CEQA responsibilities by adopting a lengthy report arguing that the project is categorically exempt from the statute. The City is wrong. Categorical exemptions are narrowly applied, both under the state CEQA statute and under the City's own CEQA Guidelines. (See Council File 02-1507 (adopted July 31, 2002.) There is no categorical exemption that excludes a project of this type from CEQA review. The project is inconsistent with the zoning designation and the City's General Plan, and is unusual in innumerable other ways, raising the specter of significant impacts on the neighbors. Therefore, a categorical exemption does not, and cannot, apply. Instead, an environmental impact report should have been prepared by the City. The Commission should conduct a similarly thorough review of impacts, alternatives and mitigation.

The City applied a categorical exemption based upon six alternative grounds, each of which is supported by corresponding sections of the State CEQA Guidelines and the City's own adopted CEQA Guidelines. Four of these grounds are irrelevant because they concern, at most, only parts of the project – such as grading, for example – and thus do not take into account the entire project. Two others do not apply because the project does not satisfy the specific requirements of the relevant exemption. A discussion of the various grounds is set forth below.

1. Section 15301(b) exemption (Class 1(b)/Class 1(2).)

The City's first cited exemption is pursuant to CEQA Guidelines section 15301(b), known as the "Class 1(b)" exemption. Section 15301 states, in relevant part:

> Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.
>
> As to subdivision (b) in particular, section 15301 further states:
>
> Examples include but are not limited to:
>
> …
>
> (b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

The City claims in its report that the Class 1(b) exemption applies because "The project includes a minor alteration of existing public utilities to provide water and sewerage, with negligible expansion of use." (Narrative at pg. 6.) However, in fact the exemption does not apply at all because the project is not an "expansion of use" at all, but rather a change of use from a municipal bus yard to a residential facility, or, alternatively, to a public works facility containing residential housing. Moreover, even assuming that a shelter project could be deemed an "expansion of use" of the existing bus yard, the only facilities at issue in subdivision (b) are "Existing facilities of … publicly owned utilities used to provide . . . sewerage, or other public utility services." Thus, this subdivision can, at most, apply only to the provision of water and sewerage to the project, rather than to the project as a whole.

The City attempts to buttress its use of the Class 1(b) exemption by referring to a similar provision of the City CEQA Guidelines, which contains the "Class 1(2)" exemption. However, slightly different language in the City Guidelines cannot expand the scope of the State Guidelines provision. The City has no authority to expand categorical exemptions beyond the scope of the State CEQA Guidelines; it can only further narrow such exemptions.

2. Section 15301 exemption (Class 1(12).)

The City also claims in its report that under the City CEQA Guidelines a "Class 1(12)" exemption applies, citing to language stating that the "existing facilities" exemption applies to "maintenance of outdoor lighting and fencing for security purposes." However, in this instance outdoor lighting and fencing are only minor components of a much larger project. Therefore, the Class 1(12) exemption can only apply, at most, to the outdoor lighting and fencing, rather than to the project as a whole.

3. Section 15304 exemption (Class 4(a), (b) (e)/Class 4(1), (3), (6)).)

The City contends that Section 15304 of the CEQA Guidelines, known as the "Class 4" exemption, applies to the project. Section 15304 states, in relevant part:

> Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:
>
> (a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.
>
> (b) New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping.
>
> . . .
>
> (e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc;

The City cites to the corresponding City CEQA Guidelines, i.e., Class 4(1), Class 4(3) and 4(6). It then justifies the use of the section 15304 (a), (b) and (e) exemptions by stating: "Only asphalt is being replaced with utility trenches/footings at a depth of 4 feet below grade, and the slope of the land is and will be less than 10%. No trees will be removed. The project will only be on the site for no more than three years and no

significant adverse impacts have been identified." (Narrative at 7.)

As with the asserted section 15301 exemptions, any exemption based upon grading or gardening and landscaping (Class 4(a) and (b)) is, at most, applicable to only a part of the larger project. Thus, it cannot support an exemption for the project as a whole.

With regard to the Class 4(e) exemption, initially it must be emphasized that the corresponding City CEQA Guideline (Class 4(6)), which must be satisfied for any application of a categorical exemption to a City project, states that the exemption is only available for the following:

> Temporary uses of land having no permanent effects on the environment, including but not limited to carnivals, parades, temporary location filming, sales of Christmas trees, building materials storage on street or sidewalk during job, construction offices and tract sales offices.

Here, the City Guidelines narrows the use of the section 15304 exemption by eliminating any project that has a "negligible" effect on the environment, and limiting its application only to projects that have "no permanent effects on the environment." Further, the City Guideline provides more examples than the State Guidelines, and none of these examples are anything like a homeless shelter lasting for 3 years. Rather, all are classically short-term uses that involve no excavation or construction, and which last for at most a period of months. The City cannot trigger this exemption simply by declaring that its $5 million project is a "temporary" facility that will only last 3 years, and by constructing buildings that are either prefabricated or tentlike.

4. Section 15332 exemption (Class 32).

The City's final ground for an exemption is CEQA Guidelines section 15332, which describes the "Class 32" exemption, also known as the "Infill" exemption. Section 15332 states:

> Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.
>
> (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
>
> (b) The proposed development occurs within city limits on a project site of no more than five acres substantially

surrounded by urban uses.

(c) The project site has no value as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

Of these five requirements, the Bridge Housing project does not meet either subdivision (a) or (d). Therefore, this exemption does not apply.

The City has zoned the MTA property "M1" (Limited Industrial). This zoning classification does not allow a homeless shelter. (See LAMC section 12.17.6; see also, definition of "Shelter for the Homeless" at section 12.03.) The General Plan in turn, and the Venice Coastal Zone Specific Plan, which is a part of the General Plan, each require that all development comply fully with the zoning classification. Thus, the project on its face is not "consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations," as required by subdivision (a).

Nonetheless, the City uses sleight of hand to establish compliance with subdivision (a), It points out that under the state statute allowing the City to declare a "shelter crisis" emergency, all zoning restrictions are waived for projects on property owned or leased by the City.[2] On this basis, the City claims there is no longer any inconsistency.

The City is wrong. Subdivision (a) is clearly intended to require full evaluation of any project that varies from the General Plan or the zoning code, because any variation is in itself evidence of potentially significant impacts on the environment that are inconsistent with any "infill" exemption. Although the City may claim it need not comply with the zoning ordinance because of the emergency statute, the project's inconsistency with the zoning ordinance remains. The City cannot ignore this inconsistency for purposes of avoiding CEQA review.

As to subdivision (d), which requires that "Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality," the City

[2] As we understand it the MTA bus facility is presently owned not by the City, but by the Metropolitan Transportation Authority, which is a state-chartered agency that operates transit throughout Los Angeles County. Thus, unless the City purchases or leases this site from the MTA prior to the commencement of the project, the "shelter crisis" waiver of the zoning code set forth in LAMC section 12.80 cannot apply.

simply states this is the case. In fact, as demonstrated elsewhere in this letter, the City has made no showing based on substantial evidence that the project would not result in significant effects, at least as to traffic, noise and water quality.

K. No Categorical Exemption Applies Because There are Unusual Circumstances Giving Rise to Potentially Significant Impacts.

The City's contention that a categorical exemption applies under CEQA was not supported by substantial evidence, because there are "unusual circumstances" that preclude the application of a categorical exemption. Section 15300.2(c) of the CEQA Guidelines states:

> (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Here, there are a host of "unusual circumstances" that give rise to a "reasonable possibility" of a significant effect on the environment. Any one of these would categorically preclude the application of any categorical exemption. These unusual circumstances are described in the preceding section of this letter.

L. No Categorical Exemption Applies Because it Can be "Readily Perceived" That the Project "May" Have a Significant Effect the Environment.

In addition to the preceding arguments concerning the use of categorical exemptions, no exemption can be used here because it can be readily perceived that the project may have a significant effect on the environment. Under the City's CEQA Guidelines, this is all that is needed to preclude the use of any categorical exemption. Article III, Section 1 of the City CEQA Guidelines provides (emphasis added):

> *The Secretary for Resources has provided a list of classes of projects which he has determined do not have a significant effect on the environment and which are therefore exempt from the provisions of CEQA. The following specific categorical exemptions within such classes are set forth for use by Lead City Agencies, provided such categorical exemptions are not used for projects where it can be readily perceived that such projects may have a significant effect on the environment*.

Applying the above language, because the project involves potentially significant impacts on parking, noise, public safety, surface water, hazardous substances, traffic and aesthetics, it can be "readily perceived" that the project "may" have a significant effect on the environment under Article III(1) of the City CEQA Guidelines. If such a potential impact can be readily perceived as to any of these three categories, no categorical exemption can

apply under the City CEQA Guidelines.

Indeed, by using the phrase "readily perceived" in combination with the term "may," the City has effectively set its own threshold for the use of categorical exemptions, which is more stringent and more protective of the environment than the standard applied under the statewide CEQA statute and statewide CEQA Guidelines. Neither state law nor the statewide Guidelines pre-empts the City CEQA Guidelines on this point. State law does not relieve the City from the obligation to comply with the City CEQA Guidelines, which are a separate enactment formalized by a resolution of the City Council adopted in 2002. (See https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=02-1507 (Council File 02-1507) Instead, as long as the City CEQA Guidelines are more restrictive than the state CEQA Guidelines, the City is bound to follow the City CEQA Guidelines prohibition on the use of categorical exemptions when it can be "readily perceived" that the project "may" have a significant impact.

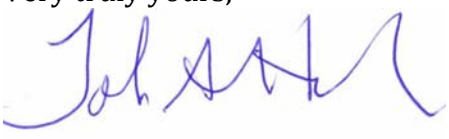
M. **Conclusion.**

Although opinions certainly differ about the nature and scope of various impacts, it is not reasonably in dispute that the Bridge Housing project may adversely affect coastal resources. By the same logic, it cannot be said with certainty that the project will not affect these resources. Therefore, this Commission is obligated to require a Coastal Development Permit, and cannot avoid its obligation to do so by approving a "de minimis" waiver. The Coastal Development Permit process forces the applicant City, with the guidance of the Coastal Commission staff, to fully evaluate and disclose the potential impacts to coastal resources, to consider any alternatives and mitigation measures that might reduce such impacts, and then to receive and respond to comments by neighbors and other members of the public. This process is no different, and no more onerous, than if a private developer were building a 154-unit hotel or apartment building on the site. Even if the Commission ultimately adopts the project, a full and complete process will make the project better.

For all of the above reasons, we request that the Commission deny the proposed waiver and require a Coastal Development Permit for the Bridge Housing project.

Thank you for considering our views on this matter.

Very truly yours,



John A. Henning, Jr.

cc: Coastal Commission Members

Enclosures:

Exhibit A -	MAILING ENVELOPES FROM NEIGHBORS
Exhibit B -	VENICE COASTAL ZONE SPECIFIC PLAN
Exhibit C -	COASTAL COMMISSION STAFF REPORT Case No. A-5-VEN-16-0041
Exhibit D -	NEIGHBOR LETTERS Re: Parking Conditions
Exhibit E -	LETTER FROM JENNIFER NOVAK Re: Stormwater and Urban Runoff
Exhibit F -	LETTER FROM JENNIFER NOVAK Re: Hazardous Substances in Soil and Groundwater
Exhibit G -	NEIGHBOR LETTERS Re: Noise and Public Safety
Exhibit H -	REPORT ON POTENTIAL NOISE IMPACTS By Dale La Forest & Associates
Exhibit I -	BRIDGE HOUSING REPORT TO CITY COUNCIL [PORTIONS] By Department of Public Works, City of Los Angeles (Notice of Exemption, Categorical Exemption Narrative, and Parsons Engineering Technical Memorandum/Traffic (without exhibits))