



WEST LOS ANGELES AREA PLANNING COMMISSION

200 N. Spring Street, Room 532, Los Angeles, California, 90012-4801, (213) 978-1300
www.planning.lacity.org

AUG 25 2016

Determination Letter Mailing Date: _____

Case No.: ZA-2012-130-CDP-MEL-1A
CEQA: ENV-2012-131-MND

Location: 16990-17000 Sunset Boulevard
Council District: 11 - Bonin
Plan Area: Brentwood-Pacific Palisades
Requests: Coastal Development Permit,
Mello Act Compliance –Appeal

**This Revised Determination Letter supersedes the Determination Letter issued on July 27, 2016*

APPLICANT: M & A Gabee, LP
Rep.: Fred Gaines, Gaines & Stacy, LLP

APPELLANT #1: Gilbert Dembo
APPELLANT #2: Larry Larson
APPELLANT #3: Patricia Chu
APPELLANT #4: James Doyl Burkett
APPELLANT #5: G. Andrew, Amy Lundberg
APPELLANT #6: Herb Englehardt
APPELLANT #7: Ginger Mason
APPELLANT #8: Lindsay Conner, Rena Conner
APPELLANT #9: Malibu Village Mobilehome Owners Association, Rep. : Candace Tysdal
APPELLANT #10: Candace Tysdal
APPELLANT #11: Christian Martin
APPELLANT #12: Pacific Investment Co., Rep. : Larry Larson

At its meeting on **December 2, 2015**, the following action was taken by the West Los Angeles Area Planning Commission:

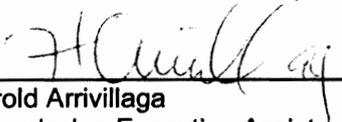
1. **Granted** the appeal.
2. **Overtured** the action of the Associate Zoning Administrator's decision dated October 2, 2014.
3. **Found** that the Associate Zoning Administrator erred or abused his discretion in approving, pursuant to Los Angeles Municipal Code Section 12.20.2, a Coastal Development Permit to allow the construction of a new approximately 98,900 square-foot residential development containing a total of 49 units in the dual permit jurisdiction of the California Coastal Zone and a Mello Act determination for affordable housing in the Coastal Zone.
4. **Adopted** the attached Findings.
5. **Did not adopt** the Mitigated Negative Declaration No. ENV-2012-131-MND as the environmental clearance for this project.

Fiscal Impact Statement: There is no General Fund Impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Motion: Halper
Seconded: Donovan
Ayes: Margulies, Waltz-Morocco
Absent: Merritt

Vote: 4-0



Harold Arrivillaga
Commission Executive Assistant

Effective Date/Appeals: The West Los Angeles Area Planning Commission's determination is final and not further appealable.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Findings and Conclusions Adopted by the Commission on
December 2, 2015, as Reflected in the Hearing Audio

c: Notification List
Charlie Rausch, Jr.

**The Findings and Conclusions Adopted by the Commission on December 2, 2015,
as Reflected in the Hearing Audio**

Findings and Conclusions

The Commission grants the appeals, overturns the ZA decision, and denies the Coastal Development Permit and the MND as the environmental clearance for the project.

The Commission adopts the following revised findings in the case 2012-130-CDP-MEL-1A and the environmental clearance ENV-2012-131-MND.

The findings are as follows:

Coastal Act Section 30620 requires the Coastal Commission to prepare and disseminate interpretive guidelines designed to assist local governments in determining how the polices in the Coastal Act shall be applied in the Coastal Zone prior to certification of their Local Coastal Programs. In the absence of an adoptive local coastal program, the local Community Plan serves as a functional equivalent. Pacific Palisades does not have an adopted Local Coastal Program.

The Commission recognizes this case to be an application for a Coastal Development Permit, and, therefore, subject to the guidance provided by the Coastal Act, the Interpretive Guidelines, and the Community Plan in making its determinations.

The Los Angeles Municipal Code 12.20.2 requires the ZA to make all of the following five findings in the affirmative to authorize the issuing of a Coastal Development Permit. The project does not conform to four of the five required findings of approval.

One, the development is not in conformity with Chapter 3 of the California Coastal Act of 1976 commencing at Section 30200 of the California Public Resources Code.

Two, the permitted development will prejudice the City of Los Angeles to prepare a coastal program that is in conformity with Chapter 3 of the California Coastal Act of 1976 as the project does not conform with several sections of the Coastal Act.

Three, the ZA made the required certifications in error, that the Interpretive Guidelines for the coastal planning and permits as established by the Coastal Commission dated February 11th of 1977, and any subsequent amendments thereto have been reviewed, analyzed, and considered in the project in making its determination. The ZA abused its discretion by not providing supportive justifications for failing to adhere to the guidelines provided by the Coastal Commission Interpretive Guidelines.

Four, the decision of the permit granting agency failed to be guided by applicable decisions of the Coastal Commission as required pursuant to Section 30625(c) of the Public Resources Code. The ZA erred by approving a project that is in conflict with the Coastal Commission in an applicable decision, citing nonconformance with neighborhood character, A-5-VEN-50-0026 and 15-0027, a violation of the Coastal Act Section 30625(c).

The ZA erred by approving 49 units, 21 units in excess of the density allowed in the Pacific Palisades by the Interpretive Guidelines for the acreage of that site.

The ZA erred by approving a project of mass and scale that is out of character with the surrounding neighborhood, a five-story apartment building in a neighborhood predominantly of one- and two-story residential structures in violation of Section 30251 of the Coastal Act.

The ZA erred by not accurately assessing the cumulative effect of future development on traffic, neighborhood character, and alteration of a landform, a bluff by approving this project, a violation of the Coastal Act Section 30250 and the Community Plan.

The ZA erred by approving the extensive alteration of a bluff landform by permitting the grading of 44,500 cubic yards of soil in violation of the Interpretive Guidelines Alteration of Land Forms Appendix A-2 and the Coastal Act Sections 30251 and 30253.

The ZA abused his discretion by failing to give proper consideration to its most significant land use issues addressed in the Brentwood-Pacific Palisades Community Plan, the designated functional equivalent to be used in applications for Coastal Development Permits in the absence of an adopted Local Coastal Program.

Objective 1-3: To preserve and enhance the varied and distinct residential character and integrity of existing residential neighborhoods.

Policy 1-3.1: Seek a higher degree of architectural compatibility for new development, and landscaping, to protect the character and scale of existing residential neighborhoods.

Policy 1-3.3: Consider factors such as neighborhood character and identity, compatibility of land uses, impacts on livability, impacts on services and public facilities, and impacts on traffic levels when changes in residential densities are proposed.

Policy 1-1.46: The city should promote neighborhood conservation, particularly in existing single-family neighborhoods, as well as areas with existing multiple-family residences.

Policy 1-6.5: Requires that any proposed development be designed to enhance and be compatible with adjacent development.

Policy 13-1.5: New development...shall provide mitigation for project traffic impacts and density increases shall be contingent upon adequate transportation capabilities or capacities.

Policy 13-1.2 New development projects shall be designed to minimize disturbance to existing traffic flow with proper egress and ingress to parking.

The Residential Issues noted in the community plan are as follows:

- Need to minimize grading, limit land use intensity, and preserve natural topography in hillside areas.
- Scale and character of multiple dwelling housing on Sunset Boulevard in Pacific Palisades from obscuring single-family residential views.
- Lack of transition in scale and density and character of multiple unit housing that are adjacent to single family housing.

- Need to restrict building on geographically sensitive areas.
- Need to improve the visual environment through the development of appropriate design criteria and controls.

On traffic: The project will have a significant adverse effect individually and cumulatively on safety and the traffic flow on Sunset Boulevard, a designated scenic highway in the coastal zone, as a result of the proposed density and its cumulative effect, a violation of Coastal Act Section 30253.

On hydrogen sulfide gas: A fair argument is made that the proposed mitigation may not be sufficient to assure the safety of the public in view of the unresolved issues raised by the appellant as to the mitigations proposed by the applicant's consultant.

The West Los Angeles Area Planning Commission cannot make an affirmative determination on the adequacy of the MND. The decision is to adopt the action that is more protective of the public, denying the MND.

Landslide area: The project site is within a designated landslide area. There is significant disagreement between the report of the applicant's consultant and the appellants' experts in regard to the adequacy of the mitigation measures to provide the safety of the development below the project.

The West Los Angeles Area Planning Commission cannot make an affirmative determination on the adequacy of the MND as required by the Coastal Act Section 30253. The decision is to opt to be more protective of the coastal resource and deny the MND.

Lastly, the coastal bluff. The issue is not within the competence of this commission to determine the status of the landform as a coastal bluff. A decision to be more protective of coastal resource assumes the landform is a resource based on the Coastal Act definition and a representation of the applicant's own geotechnical consultant, Mr. Sassan, a Geoscience description as a coastal bluff in his report of 17000 and 17020 Sunset dated 11/16/2009.

Coastal Bluff definition: The Coastal Act definition within the Coastal Zone, coastal bluffs are: (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and (2) those bluffs, the toe of which is not now or never historically subject to marine erosion, but the toe of which lies within an area otherwise defined in Public Resources Code Section 30603(a)(1) or (a)(2). 14 Cal Code of Regulations 13577(h).

The decision is it to adopt the action that is more protective of the coastal resource, in this case to deny the MND.

These findings are based on the facts solicited by the hydrological and geological reports from appellant, the testimony of experts for the appellant, the residential letters and testimony regarding things like traffic and egress and other kinds of geological issues, including landslides that happen there and all the other testimony.

Some of the facts that we can rely on in denying the MND are contained in the Zoning Administrator's decision of October 4, 2014, beginning on page 19 and going through to page 23. In each one of those cases, the ZA has indicated the facts and testimony he received, and then he does a response. We can rely on those facts that were given there.

The ZA erred in not fully considering the precedential impacts that this project may have on future developments. There's evidence there may be future developments in this very area.

The ZA erred in not fully considering the past rulings, including the Coaloa project, which is pretty much close to next door and had the same kinds of things that were involved in there. In fact, many of the facts in the Coaloa project are similar, if not the same, as the facts are here.

There was substantial testimony of the risks involved to the Malibu Mobile Home Estates immediately below this project and the shaky ground that that project sits on, making this project potentially more dangerous than the Coaloa project, which this Commission has already ruled on.

We have testimony regarding substantial landslide and groundwater and other issues that are not going to be mitigated by the MND, and this is including potential environmental impacts, including traffic access, landslides, geological and hydrological issues, and the hydrogen sulfide presence.

There's a substantial issue as to whether or not this project will be able to utilize the easements for at least wastewater and then possibly groundwater, as well.

The precedential value of the local government's decision for future interpretation of the LCP will be impinged if we allow this project to go forward as it's presently set up. And we note from the staff report from the Coaloa decision from the Coastal Commission, they indicate:

The City's denial of the proposed project is consistent with several precedents relating to locations that devolved into a coastal bluff and approval of the proposed project with a lack of information with regards to bluff setbacks and geologic hazards would be a bad precedent that would prejudice the ability of the city to prepare a local coastal program that is in conformity with Chapter 3 of the Coastal Act.