ITEM No. 26 - A

MOTION

I MOVE that the matter of the Mitigated Negative Declaration (MND), Mitigation Measures, Mitigation Monitoring Program (MMP), and Planning and Land Use Management (PLUM) Committee Report relative to a **Coastal Development Permit** appeal for the property located at 138, 140, 142 East Culver Boulevard and 6911, 6913, 6915, 6917 Vista Del Mar, Item No. 26 on today's Special Council Agenda (CF 18-0686) BE AMENDED to approve the following actions:

1. GRANT the appeals, and thereby OVERTURN the Director's determination in approving a Coastal Development Permit for the project;

2, ADOPT the attached FINDINGS in lieu of the findings attached to the File; and

3. DISAPPROVE the Mitigated Negative Declaration (MND).

PRESENTED BY ______________________
MIKE BONIN
Councilman, 11th District

SECONDED BY ______________________

August 17, 2018
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ORIGINAL

APPEAL OF DIR-2012-3537-CDP-DB-SPR-MEL-1A AND ENV-2012-3536-MND-REC1 IS GRANTED AND THE COASTAL DEVELOPMENT PERMIT IS DENIED.

FINDINGS:

The City Planning Commission heard DIR-2012-3537-CDP-DB-SPR-MEL-1A and ENV-2012-3536-MND-REC1 (the "Proposed Project"). The City Planning Commission failed to reach a decision, therefore the operative decision is the Director's Determination dated March 16, 2018 (the "Director's Determination").

In order to approve a Coastal Development Permit, the City must find each of the following:

1. The development is in conformity with Chapter 3 of the California Coastal Act of 1976;
2. The development will not prejudice the ability of the City of Los Angeles to prepare a local coastal program that is in conformity with Chapter 3 of the California Coastal Act;
3. The Interpretive Guidelines for Coastal Planning and Permits as established by the California Coastal Commission dated February 11, 1997 and any subsequent amendments thereto have been reviewed, analyzed and considered in light of the individual project in making this determination; and
4. The decision of the permit granting authority has been guided by any applicable decision of the California Coastal Commission pursuant to Section 30625(c) of the Public Resources Code, which provides that prior decisions of the Coastal Commission, where applicable, shall guide local governments in their actions in carrying out their responsibility and authority under the Coastal Act.

As detailed below and supported by substantial evidence in the record, the appeal of DIR-2012-3537-CDP-DB-SPR-MEL-1A and ENV-2012-3536-MND-REC1 must be granted, and the Coastal Development Permit must be denied because the City can make none of the findings necessary to support the grant of a Coastal Development Permit.

1. THE DEVELOPMENT IS NOT IN CONFORMITY WITH CHAPTER 3 OF THE CALIFORNIA COASTAL ACT OF 1976

A. The Proposed Project Fails to Satisfy the Coastal Act Requirements Regarding Visual and Scenic Resources

Section 30251 of the Coastal Act provides as follows:

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local governments shall be subordinate to the character of its setting.

The project siting and design fail to meet this provision of the Coastal Act in two respects: (1) character and scale, and (2) protection of scenic and visual qualities of coastal areas.

(1) The Proposed Project Is not Compatible with the Character and Scale of the Surrounding Area

There is substantial evidence in the record that the proposed size of the Proposed Project (height, lot coverage, massing, and area) is not compatible with the scale and character of the existing development in the surrounding area. The record shows adjacent buildings in the surrounding commercial district of lower Playa del Rey are consistently and overwhelmingly smaller in terms of massing, area, lot coverage, and height. The area is characterized by one- to three-story residential and commercial structures with typically smaller lot coverage than the Proposed Project.

The Director's Determination dated March 16, 2018, erred in that it failed to examine "the visual compatibility with the character of the surrounding areas" as set forth in the Coastal Act. Upon examining the evidence in the record, the City Council finds that the Proposed Project is not compatible with the character of the surrounding areas. This smaller scale character of the area has been noted at least twice previously by the California Coastal Commission ("Coastal Commission") and served as a basis for determining whether other similarly situated projects were compatible with the character of the surrounding area.

In Coastal Commission Case No. 5-10-295, which involved two office buildings with a height of 37 feet, the Coastal Commission stated "Culver Boulevard consists of a mix of one to three story residential and commercial developments." (Coastal Commission, Case No. 5-10-295, 309/315 Culver Blvd., April 2011).

In Case No. 5-04-129, which involved a project for a three-story single-family dwelling located at 112/114 Culver Boulevard, the Coastal Commission limited the height of a proposed project to 37 feet in order to protect the character and visual quality of the surrounding community. The Coastal Commission stated:

> Although the proposed project's roof line is below the 37 foot height, at 33 feet, the 196 square foot roof access stairwell penthouse extends to 41 feet. The penthouse is setback approximately 18 feet from the front of the building. However, because of the small scale of surrounding development, the penthouse will be visible from the surrounding streets and will increase the visual bulk of the building. In order to protect community character and visual quality, in past Commission permit action, the Commission has limited development to a maximum height of 37 feet. Therefore, in order to protect the community character and visual quality of the area, Special Condition No. 1 limits the development to a maximum height of 37 feet above the existing grade, . . . Only as Conditioned is the proposed project consistent with Section 30251 of the Coastal Act.

(Coastal Commission, Case No. 5-04-129, 112/114 Culver Blvd., July 2002.)

Los Angeles Department of City Planning Staff, Juliet Oh, testified at the City Planning Commission hearing on the Proposed Project that the character and scale of the surrounding

area of lower Playa del Rey is two to three stories, and the Directors Determination states that "existing and recent development in this neighborhood has been limited to residential and commercial structures no greater than 37 feet in height."

In addition, the record contains extensive study of the character and scale of the area in terms of stories, height, and massing. A local architect evaluated the three blocks of Culver Boulevard surrounding the project and concluded via a letter provided to the City Planning Commission on June 13, 2018 that "this massive structure is totally inconsistent with the nature and character of the Playa del Rey community."

The addition of an 11-foot density bonus height incentive to the Proposed Project further exacerbated the Proposed Project's incompatibility with the character of the surrounding areas. The application of state density bonus provisions or other state housing law does not obviate the need to comply with the Coastal Act, therefore, the City is obligated to analyze the Proposed Project's consistency with the applicable Coastal Act provisions and the necessary findings for a Coastal Development Permit by considering the overall size, mass, height, and scale of the project. As the court stated in Kalnel Gardens, "[T]he Coastal Act takes precedence over statutes awarding density and height increase bonuses for proposed residential developments." Kalnel Gardens, LLC v. City of Los Angeles (Second District 2016) 3 Cal.App.5th 927, 935. Density bonus law is clear that it shall not be construed or in any way lessen the effect or application of the Coastal Act, which must be complied with in order for the City to meet the findings to grant a Coastal Development Permit.

Looked at objectively, statistically, by the Coastal Commission's own decisions, by expert review, or in light of the Kalnel Gardens decision, all of which is reflected in the record, the Proposed Project is out of scale and character with the surrounding community and violates Section 30251 of the Coastal Act, and the Director erred in finding otherwise. Therefore, the necessary finding to grant the Coastal Development Permit cannot be made.

(2) The Proposed Project Does not Comply with the Coastal Act's Requirements for Protection of Scenic and Visual Qualities of Coastal Areas

There is substantial evidence in the record that the Proposed Project does not comply with Coastal Act Section 30251's requirement that "[n]ew development in highly scenic areas such as those designated . . . by local government shall be subordinate to the character of its setting."

The Proposed Project is located in an area with public views from the public street on the bluffs facing towards the ocean and from the ocean towards the bluffs as well as from the scenic highway located in Playa del Rey. The Director erred in failing to consider that the views to and from the bluffs and from the scenic highway in lower Playa del Rey are designated protected resources. The resources are identified for preservation and protection in the City's General Plan and in a local specific plan. The Westchester-Playa del Rey Community Plan, part of the City's General Plan, identifies resources in the area as ones to be preserved. The scenic highway designation for Vista del Mar is documented in the City's adopted mobility element of the

General Plan known as Mobility 2035. The Coastal Bluffs Specific Plan designates views to be preserved as specifically identified in an exhibit to the interim control ordinance. The Director's Determination acknowledges that views of the "sand dunes," which are a coastal feature and visual resource, would be blocked by the Proposed Project. Additionally, the photographic evidence and 3D Models presented by the appellants and contained in the record for the Proposed Project amply demonstrate that views of the Pacific Ocean, Santa Monica Mountains, and scenic coastal areas will be blocked.

A means to ensure that coastal resources are being protected and the projects are subordinate to the character of their setting is by applying the 37-foot height limit provided in applicable regulations for this area. In fact, the Coastal Commission has applied the 37-foot height limit to lower Playa del Rey for decades, and thus has consistently indicated that the height limit is protective of coastal resources.

Therefore, the Proposed Project cannot be found to satisfy the Coastal Act's requirement that new development be "subordinate to the character of its setting," and thus the Project violates the provisions of Section 30251 of the Coastal Act requiring that the "scenic and visual qualities of coastal areas be considered and protected."

B. Public Access: The Proposed Project's Parking Is Inadequate and Denies Coastal Access in Violation of the Coastal Act

The Proposed Project does not provide parking adequate to ensure coastal access, which is in conflict with Sections 30211 and 30212 of the Coastal Act. Therefore, the Proposed Project cannot be found in conformity with the necessary Coastal Act provisions in order to make the findings required for the City to issue a Coastal Development Permit.

Section 30211 of the Coastal Act provides:

> Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act provides:

> (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

The Coastal Commission has consistently found that that a direct relationship exists between the provision of adequate parking and availability of public access to the coast. To determine the necessary amount of parking necessary to ensure adequate parking supply to protect

coastal access, the Coastal Commission has applied the South Coast Regional Interpretive Guidelines and/or adopted local plans. In the case of Playa del Rey, the Director erred in failing to consider and apply the parking standards set forth in the South Coast Regional Interpretive Guidelines and the Del Rey Lagoon Specific Plan. There is substantial evidence in the record to support the conclusion that adherence to these coastal parking standards, including the requirement to replace parking spaces lost as a result of project development, would require the Project to provide 212 parking spaces rather than the 123 spaces proposed to be provided. Based on the evidence contained in the record, and further supported by the Coastal Commission's findings in approving the Del Rey Lagoon Specific Plan, access to the beach in lower Playa del Rey is already curtailed due to the lack of parking. The record shows that the beach in lower Playa del Rey serves both the residents of the surrounding area as well as residents of and visitors to the greater Los Angeles area. As shown in the information included in the record during public testimony at the Planning and Land Use Management Committee on August 14, 2018, the appellants conducted a zip code survey and parking studies to support the conclusion that the area beach serves residents and visitors from beyond the Playa del Rey community, therefore highlighting the need to ensure that adequate parking pursuant to applicable standards is necessary to ensure public coastal access.

As confirmed in the Kalnel Gardens case, the density bonus provisions do not supersede the Coastal Act's protections for public access. Therefore, the parking required pursuant to the coastal parking standards should have been provided, rather than the reduced parking standards pursuant to LAMC §12.22.A.25 ("Density Bonus Ordinance"), and without adequate parking, the Proposed Project cannot be found to comply with the Coastal Act's requirements to ensure coastal access.

D. The Proposed Project's Failure to Consider Sea Level Rise Violates the Coastal Act by Making a Determination of Project Impacts on Coastal Access and Geological Stability Impossible

The Proposed Project's failure to consider sea level rise and the resulting impacts on coastal access and geologic stability conflicts with the requirements of Chapter 3 of the Coastal Act. Section 30253 of the Coastal Act requires that "[n]ew development shall do all of the following:"

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. . . .
(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

The record for the Proposed Project indicates that Department of City Planning staff required a sea level rise analysis from project applicant; however, the project applicant never submitted this analysis. City Planning staff issued their letter of decision without this pertinent

information. The project site is located one and one-half blocks from the beach, with an elevation starting height of 10 feet above mean sea level. The Proposed Project includes a subterranean garage. A sea level rise analysis should have been required to provide the necessary analysis to support the findings needed to grant a Coastal Development, however, as stated above, a sea level rise analysis was not submitted to the City.

The Coastal Commission previously found in a similar situation that a sea level rise analysis was required in order to support the issuance of a Coastal Development Permit. For the project located at 305-309 Ocean Front Walk, in the community of Venice (Case No. A-5-VEN-17-0051), the Coastal Commission found that the City's findings for approval of that project did not include an analysis of how sea level rise would affect the project site or surrounding area over the expected life of the proposed development. As such, the City's findings that the project would be sited and designed in a manner consistent with the public access, coastal hazards, and shoreline protective devices policies of sections 30235 and 30253 of the Coastal Act were not adequate. Therefore, the Commission found that the City did not provide an adequate degree of factual and legal support for its decision to grant the Coastal Development Permit, and that permit issuance was not upheld. (Coastal Commission, Case No. A-5-VEN-17-0051, 305-309 Ocean Front Walk, Venice, October 27, 2017.)

Because the application for the Proposed Project does not include the required sea level rise analysis, and because the analysis that was prepared and submitted for the record by the appellants using the applicable Coastal Commission standards shows that the Proposed Project will experience significant flooding impacts due to sea level rise over the life of the project, the necessary findings for the Coastal Development Permit cannot be made. Therefore, the request for the Coastal Development Permit must be denied for failure to demonstrate compliance with the Coastal Act.

2. THE DEVELOPMENT WILL PREJUDICE THE ABILITY OF THE CITY OF LOS ANGELES TO PREPARE A LOCAL COASTAL PROGRAM THAT IS IN CONFORMITY WITH CHAPTER 3 OF THE CALIFORNIA COASTAL ACT

Approving the Proposed Project would prejudice the ability of the City to prepare a Local Coastal Program for the area that is in conformity with Chapter 3 of the Coastal Act. The Director erred in finding that the project complies with the Chapter 3 priorities of the Coastal Act and will, therefore, not prejudice the ability of the City to prepare a local coastal plan. The Council Staff, Councilmember, and the community all testified and provided additional supporting evidence contained in the record that shows if this project is approved it will create a new precedent for pending development in lower Playa del Rey. That new precedent will enable significant change to the character and scale of the community, and will deny or unduly infringe on coastal access by enabling projects that do not meet coastal parking standards and that cumulatively degrade the visual resources of the area. Therefore, the Project Project will prejudice the ability of the City to prepare a local coastal plan that complies with the Coastal Act as it has been applied and interpreted by the Coastal Commission in lower Playa del Rey. As such, the necessary findings to support granting a Coastal Development Permit cannot be made.

3. **THE INTERPRETIVE GUIDELINES FOR COASTAL PLANNING AND PERMITS AS ESTABLISHED BY THE CALIFORNIA COASTAL COMMISSION DATED FEBRUARY 11, 1997 AND ANY SUBSEQUENT AMENDMENTS THERETO HAVE NOT BEEN PROPERLY REVIEWED, ANALYZED, OR CONSIDERED IN LIGHT OF THE INDIVIDUAL PROJECT IN MAKING THIS DETERMINATION**

The Interpretive Guidelines for Coastal Planning and Permits ("Interpretative Guidelines") as established by the Coastal Commission were not properly reviewed, analyzed, or considered in making the Director's Determination, and for that reason the necessary finding to confirm that such requirements were considered cannot be made. Additionally, if the Interpretative Guidelines were to be properly analyzed and applied, the City would not be able to find that the Proposed Project was consistent with the provisions contained therein.

The Los Angeles County Regional Interpretive Guidelines were adopted by the California Coastal Commission on October 14, 1980, to supplement the Statewide Guidelines. Both regional and statewide guidelines, pursuant to Section 30620(b) of the Coastal Act, are designed to assist local governments, the regional commissions, the commission, and persons subject to the provisions of the referenced chapter of the Coastal Act in determining how the applicable policies of the Coastal Act shall be applied to the coastal zone prior to the certification of a local coastal program. These Guidelines are used in the process of evaluating how the policies of Chapter 3 of the Coastal Act apply to individual projects.

As shown in the record, the Regional Interpretive Guidelines state that multifamily residential projects that are located inland of Trolley Way should be no more than 30 feet above the centerline of the frontage road. The only exception noted is for lots fronting on or inland of an area called the Esplanade, where heights are allowed to be a total of 35 feet. The Proposed Project is higher than even the most generous height provisions in the Guidelines. However, as noted in the Director's Determination and evidenced by a list included therein of 14 cases all showing a height limit of 37 feet (dating back to 1998 when electronic records for the Coastal Commission first became available), the Del Rey Lagoon Specific Plan has been used to augment the Regional Interpretive Guidelines to establish a height of 37 feet as being the height appropriately protective of coastal resources in the area.

There are additional potential conflicts with the Regional Interpretive Guidelines that would make it difficult for the City to conclude that the Proposed Project was in conformance with the standards set forth therein. The Regional Interpretive Guidelines state that no residential projects should be developed in areas presently zoned for commercial use. The project site is currently zoned C-4, therefore a potential conflict with the Regional Interpretive Guidelines exists. Furthermore, the Guidelines state that development proposals should seek to retain all existing vista points. The Proposed Project interferes interferes with the vista point from Montreal Street, which is a public street that provides broad views of the coastal area. If the project were to go forward as proposed, that vista point would not be retained. Finally, the Proposed Project is not consistent with the Regional Interpretive Guidelines related to parking, which guidelines have a direct impact on coastal access. There is no showing included in the

record to support that the Regional Interpretive Guidelines were reviewed, analyzed, or considered in determining that providing only 123 parking spaces was adequate to comply with the Coastal Act and properly protect coastal resources.

The Director's Determination erred in finding that the Density Bonus Ordinance allows additional height and less parking while still being able to support a conclusion that the Proposed Project adheres to the Coastal Act. According to the court in Kalnel Gardens, the Coastal Act is not superseded by density bonus incentives when they are in conflict with the Coastal Act, and therefore, the Proposed Project cannot be found to be consistent with the Regional Interpretive Guidelines as augmented by the Del Rey Lagoon Specific Plan.

4. **THE DECISION OF THE PERMIT GRANTING AUTHORITY HAS NOT BEEN PROPERLY GUIDED BY ANY APPLICABLE DECISION OF THE CALIFORNIA COASTAL COMMISSION PURSUANT TO SECTION 30625(C) OF THE PUBLIC RESOURCE CODE, WHICH PROVIDES THAT PRIOR DECISIONS OF THE COASTAL COMMISSION, WHERE APPLICABLE, SHALL GUIDE LOCAL GOVERNMENTS IN THEIR ACTIONS IN CARRYING OUT THEIR RESPONSIBILITY AND AUTHORITY UNDER THE COASTAL ACT.**

The Director's Determination was not properly guided by the applicable decisions of the Coastal Commission, and the necessary findings to support the issuance of a Coastal Development Permit cannot be made. Therefore, the appeal must be granted and the Coastal Development Permit must be denied.

As detailed in Findings 1 through 3, herein, properly following applicable decisions of the Coastal Commission would result in the Proposed Project being required to have a lower height, smaller massing, and character that is consistent with the surrounding area. Additionally, the Proposed Project would be required to provide additional parking to ensure that it did not negatively impact coastal access. However, the Director's Determination did not require such provisions before granting the request for a Coastal Development Permit. Without compliance with the standards, guidelines, and requirements that have come out of previous Coastal Commission decisions, the Proposed Project cannot be found to be compliant with the Coastal Act and therefore, this finding cannot be made.

Decisions from the Coastal Commission implementing Coastal Act Section 30604 do not preclude the City from determining that the Proposed Project fails to comply with the Coastal Act. Section 30604 provides in relevant part that the Coastal Commission shall encourage affordable housing opportunities in the Coastal Zone and may not require measures that reduce residential densities sought by an applicant. However, the Proposed Project does not qualify as a residential development for low and moderate income housing under the Coastal Act. It does not provide 20% of its units for low income households and has made no commitments to offer any of the units to individuals with moderate income.

The Proposed Project also is not requesting additional density. The project site has an allowable density of 96 units without the need for a density bonus and could have up to 103 units with a density bonus. The Proposed Project is seeking only 72 units and has made no showing that the

72 units cannot fit within a building envelope that is consistent with the Coastal Act. The incentives and and/or concessions requested by the Applicant are not enabling density, they are being used to create luxury units as Councilmember Mike Bonin testified in his comments at the Planning and Land Use Management Committee hearing on August 14, 2018.

Further, if the incentives are required to enable the requested density of 72 units, the incentives (as distinct from density) based on substantial evidence in the record cannot feasibly be accommodated under the Coastal Act. As California Government Code Section 65915(c) states: "This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 . . . of the Public Resources Code." The California State Court of Appeal, in Kalnel Gardens, affirmed that the Density Bonus regulations are subordinate to the Coastal Act. Therefore, any incentives or concessions sought under Density Bonus laws cannot be used to avoid compliance with the applicable provisions of the Coastal Act.

Additionally, in Section 30604, the California Legislature has declared and found that it is important to both protect "existing" and the provision of "new" affordable housing opportunities in the coastal zone. As Councilmember Mike Bonin and multiple community speakers testified at the August 14, 2018 hearing and as substantial evidence in the record shows, Playa del Rey has a large existing stock of rent stabilized housing units. Councilmember Mike Bonin testified that allowing a luxury project like the Proposed Project would result in gentrification and displacement, or loss of affordable housing stock, in lower Playa del Rey.

Finally, to the extent that the Applicant has attempted to raise arguments under the Housing Affordability and Accountability Act ("HAA"), the HAA, like Density Bonus Law, defers to the Coastal Act. Government Code §65589.5(e).

Therefore, it is the granting of the appeal and the denial of the Coastal Development Permit based on the findings contained herein, and on the substantial evidence in the record, that results in the City's decisions satisfying this finding and being properly guided by the applicable decisions of the Coastal Commission.

5. THE ENVIRONMENTAL CLEARANCE PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IS INADEQUATE

In addition, the Coastal Development Permit should be denied because the Mitigated Negative Declaration is not adequate to serve as the project's environmental clearance under the California Environmental Quality Act ("CEQA") and Section 21082.1(c)(3) of the Public Resources Code. Environmental issues specific to the Proposed Project were not sufficiently evaluated, therefore, there is not sufficient evidence in the record to support the conclusion that the Applicant's analysis addressed potentially significant environmental concerns related to the Proposed Project.

A. There is substantial evidence of a fair argument that the project may have a substantial adverse environmental effect requiring an environmental impact report ("EIR") regarding each of the following:

i. There is substantial evidence of a fair argument that dewatering associated with the project will result changing the groundwater gradient and moving a known PCE toxic plume located 310 Culver toward the project site. Potential risks include human health hazards resulting from vapor intrusion. There is credible expert testimony on both sides of this issue and the IS/MND itself admits the potential to move the plume toward the project site. The City of Los Angeles is the lead agency under CEQA with responsibility for controlling environmental impacts of the project and the proposed mitigations found in Conditions paragraph 27 of the City Planning Commission Determination Letter. However, the mitigation measures contained therein consist of determining the required dewatering and then designing a system to mitigate required dewatering. As such, the mitigations are impermissibly deferred. The process of ensuring a known toxic plume does not adversely impact human health and safety must be open, transparent, and public in order to ensure that the decision maker is property informed of the potential environmental impacts prior to determining whether to adopt an environmental document pursuant to CEQA.

ii. There is substantial evidence of a fair argument that the dewatering associated with the project will adversely affect water quality in the wetlands, which will in turn affect the sensitive habitat and species in the Ballona wetlands. Appellants have presented expert testimony, which is contained in the record, regarding water quality affects and the habitat effects of a change of water quality. Applicant's reports do not purport to address water quality in the wetlands following dewatering. Even if they did, credible expert testimony exists on both sides of the issue, which in the context of a Mitigated Negative Declaration under CEQA, the City is required to find substantial evidence of fair argument of potential significant adverse environmental report and require the preparation of an EIR.

iii. There is substantial evidence in the record of a fair argument that the Proposed Project will have an adverse effect on area views to and from the Coastal Bluffs, including from public streets, public beach entrances, a scenic highway, and private residences, which are considered under CEQA and as part of the discretionary review required under the Westchester-Playa del Rey Community Plan. The public outcry over the visual impact alone amounts to substantial evidence of a fair argument. Three dimensional models demonstrating how the Proposed Project will affect area views provided by Appellants are additional credible evidence. Applicant has submitted contrary visual impact evidence. Given evidence both ways, the City's responsibility is to require an EIR even if it were to find applicant's evidence more credible, which the City does not.

iv. There is substantial evidence in the record that the project, which creates an impervious surface nearly an acre wide, will add to the already significant flooding in the immediate vicinity of the Proposed Project. The mitigation measures imposed by the City based on the Applicant's own geotechnical review do not match the assumptions made by the Applicant's flood analysis expert. Appellants have submitted expert evidence contained in the record that the Proposed Project will exacerbate existing area flooding. The Appellants have further submitted evidence contained in the record that the Applicant's stormwater analysis is flawed, that the Proposed Project does not and cannot implement the mitigation measures contemplated in the analysis and that the Applicant's preliminary stormwater report makes contra-factual assumptions, such as adequacy of area drainage, potential on-site stormwater infiltration, and lack of sea level rise.

v. There is substantial evidence contained in the record that the Proposed Project will result in a substantial impact by creating excess shade and shadow on sensitive receivers to the northwest and northeast, including on local commercial establishments on Culver Boulevard.

vi. There is substantial evidence contained in the record that particulate matter generated during construction would exceed localized significance thresholds established by the South Coast Air Quality Management District notwithstanding proposed mitigation measures.

vii. There is substantial evidence in the record, both in terms of expert reports and public comment during all phases of the hearing process, of a fair argument that the Proposed Project will result in significant adverse traffic safety impacts. The Applicant's line of sight study may be evidence to the contrary but given substantial evidence both ways, even if the City finds applicant's evidence credible, the City is requires to find a fair argument exists of potential substantial environmental impact and require an EIR.

B. <u>The IS/MND provides inadequate information to assess relevant potential environmental impacts including noise, air quality, and cumulative impacts.</u>

i. Among other significant inadequacies found in the IS/MND is the assumption that only one cement truck would be used to pour the foundation for the entire Proposed Project and that there will be no trucks trips during the grading phase of the Proposed Project. Each of these assumptions makes the noise and air quality analysis of the Proposed Project's impacts an inadequate disclosure of potential environmental impacts and, therefore, an inadequate basis for a decision

maker to conclude the Proposed Project will not have a substantial adverse impact on the environment under CEQA.

ii. The IS/MND does not adequately analyze potential cumulative impacts. The IS/MND (page V-131) contemplates cumulative impacts of proposed projects located on Applicant's lots located at 6918 Pacific (29 Units totalling 4,000 square feet, located on the beach sand dunes) and at 220 Culver (63 Units, 11,000 square feet). In addition, the record shows that the applicant has prepared a traffic study and a geotechnical study for the project proposed for 220 Culver. Therefore, it can be concluded that these projects are reasonably foreseeable. The cumulative impacts of all applicant's contemplated development in lower Playa del Rey must be reviewed in an environmental impact report that will include evaluation of visual impact and hydrogeological impact, among other issues.