

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



# Th16b

Filed: 6/20/2013  
49th Day: 8/8/2013  
Staff: D. Lilly-SD  
Staff Report: 6/26/2013  
Hearing Date: July 11, 2013

## STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

**Appeal No.:** A-6-NLC-13-0211

**Applicant:** Marina Gateway Development, LLC

**Local Government:** City of National City

**Decision:** Approval with Conditions

**Location:** 700 Bay Marina Drive, National City, San Diego County

**Description:** Remove condition on existing coastal development permit that restricts uses on the ground floor of a 14,300 sq.ft. two-story office/commercial building to tourist-commercial uses, to allow a professional college within 5,600 sq.ft. of the first floor, and 6,300 sq.ft. on the upper floor. The term of the permit is limited to 10 years.

**Appellants:** Commissioner Esther Sanchez and Commissioner Dayna Bochco

**Staff Recommendation:** Substantial Issue

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### PROCEDURAL NOTES:

The Commission will NOT take public testimony during the substantial issue phase of the appeal hearing unless at least three Commissioners request it. Unless the Commission finds that the appeal raises “no substantial issue,” it will continue the de novo phase of the appeal hearing to a future meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the appeal hearing.

## **SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

The subject project would remove a condition of a coastal development permit issued by the City of National City that limits use of an existing commercial recreation building to only tourist-related uses on the ground floor of the building, in order to allow a professional medical college (a non tourist related use) to lease space on 5,600 sq.ft. of the ground floor, as well as 6,300 sq.ft. of the upper floor.

The primary issues raised by the subject development are the project's inconsistency with the certified Local Coastal Program (LCP) regarding permitted uses in an area designated Tourist Commercial, and the loss of building area designated for high-priority visitor-serving uses to non-priority professional college/medical office space.

The City of National City has only approximately 30 acres of land designated for high-priority tourist commercial uses; thus, it is particularly important that the City's limited opportunities for tourist-oriented development are preserved. The LCP allows a variety of uses in this designation, including outdoor commercial recreation; eating places; gas stations; hotel, motel, and related services (including apartment hotels, auto rental, banquet facilities, barber shops, beauty shops, bicycle rentals, boarding houses, convention centers, hotels, meeting rooms, motels, shoe shine shops, and travel agencies); tourist-commercial retail space; and offices and studios. "Offices and studios," includes schools, studios, and colleges, but only as an accessory use to a recreational or tourist oriented development.

The proposed professional college is not an accessory use to a recreational or tourist oriented development, nor does it not fall under any of the other permitted uses in the CT designation. The City found that the use would benefit the community despite not being a recreational or tourist-oriented development. However, the certified LCP policies were designed to create a small node of tourist-oriented uses on the subject site, supporting each other in a concentrated area near the City's only bayfront area. Committing the subject building to non-priority uses for at least the next 10 years would further reduce the already extremely limited area designated for priority uses in the City's coastal zone, and may discourage the development of other tourist commercial businesses. Allowing uses inconsistent with the certified LCP through the permit process also undermines the integrity of the City's LCP and sets an adverse precedent for future development in the other remaining CT zone.

Therefore, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP and the public access and recreation policies of the Coastal Act.

Standard of Review: Certified Local Coastal Program; public access and recreation policies of the Coastal Act.

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### **APPENDICES**

Appendix A – Substantive File Documents

### **EXHIBITS**

Exhibit 1 – Location Map

Exhibit 2 – Certified Land Use Plan

Exhibit 3 – Commission Appeals

Exhibit 4 – Commission Staff Comment Letters

**I. APPELLANTS CONTEND THAT:** The project, as approved by the City, is inconsistent with the certified LCP and public recreation policies of the Coastal Act with respect to the permitted uses in a tourist commercial designated area, and protection of high-priority commercial recreation uses.

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**II. LOCAL GOVERNMENT ACTION.** The coastal development permit was approved by the City of National City Planning Commission on June 4, 2013. Specific conditions were attached which, among other things, require that the permit approvals expire 10 years after the City's adoption of the resolution of approval.

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### **III. APPEAL PROCEDURES.**

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date, and will review the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the

approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

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#### **IV. MOTION AND RESOLUTION**

The staff recommends the Commission adopt the following resolution:

**Motion:**        *I move that the Commission determine that Appeal No. 6-NLC-13-0211 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Resolution:** *The Commission hereby finds that Appeal No. 6-NLC-13-0211 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

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## **V. FINDINGS AND DECLARATIONS.**

The Commission finds and declares as follows:

### **A. PROJECT DESCRIPTION AND HISTORY**

The original Marina Gateway Plaza coastal development project was approved by the National City Planning Commission on August 29, 2005 (Case File No. CDP-2005-2). The project included construction of a 173-room hotel, a 4,000 sq.ft. restaurant, and an approximately 16,000 sq.ft. two-story retail commercial building on a 7.5 acre vacant site west of Interstate 5, just north of Paradise Marsh, in the City of National City. The subject site is zoned and designated CT-PD-CZ (Tourist Commercial, Planned Development, Coastal Zone) in the certified Local Coastal Program.

The subject permit would remove Condition of Approval No. 55 of the Coastal Development Permit for the Marina Gateway Development. This condition states:

55. Any office use of the ground floor of the retail commercial building, except retail travel/tourism offices, is prohibited.

The development was completed several years ago and the hotel and restaurant are currently in operation. The subject building contains approximately 14,300 sq.ft. of leasable space. According to the applicant, 2,000 sq.ft. of the ground floor has been leased to the adjacent Buster's Restaurant, 1,400 sq.ft. of the upper floor was recently leased to an engineering firm, and the remainder of the building has been vacant since it was built in 2009. The purpose of removing the condition in question would be to permit a professional college in suites on both the ground floor (5,600 sq.ft.) and the upper floor (6,300 sq.ft.) of the retail commercial building located in the Marina Gateway development. The college would be for students specializing in Healthcare Training (e.g., Vocational/Practical Nursing; Medical Assisting, Respiratory Therapy, Dentistry, etc.). The terms of the Planned Development Permit, Conditional Use Permit, and Coastal Development Permit approved by the City are limited to 10 years.

After receiving notice of the proposed project, Commission staff sent comment letters to the City on March 22, 2013 and May 3, 2013, identifying the proposed professional college as a use that was not consistent with the LCP land use designation of Tourist Commercial (see Exhibit #4).

**B. PUBLIC RECREATION AND PRIORITY USES**

The appellants contend that the project is not consistent with the City of National City LCP policies addressing public recreation and priority uses, because the permit would allow a professional college to be located in an area that is designated for tourist commercial uses.

There are numerous provisions of the City's certified LCP that require the subject site to be developed with tourist commercial, recreational, and/or open space uses:

In the certified LUP, the LAND USE PLAN SUMMARY under COMMERCIAL/RECREATION/OPEN SPACE states:

The National City bayfront should be designated for tourist commercial, recreational and open space use...Areas to the north of the marsh and west of the marsh and railroad spur should be designated for tourist commercial and recreational uses. [...]

The area to the north of the Paradise Marsh, east of the SD&AE railroad right-of-way and south of 24<sup>th</sup> Street is also designated for tourist commercial use. A transition from existing industrial uses to future commercial is appropriate to provide a gateway to the Bayfront and the Port area.

LUP Chapter IV Recreation, ANALYSIS, states:

Tourist commercial development at 24<sup>th</sup> Street north of Paradise Marsh would provide a gateway to National City's Bayfront as well as to the Port. It would provide facilities such as restaurants, hotel or motel and other complementary uses to those intended at the bayfront itself, west of Paradise Marsh. It would be developed to encourage bicycle and pedestrian users since it is within close proximity to both the trolley station and the recreational area along the Sweetwater River Channel.

Section III. COMMERCIAL ZONES, in the City's certified Implementation Plan states:

1. Purpose of commercial tourist (CT) Zone

Section 18.16.020 of the Land Use Code states that the purpose of the CT zone is to provide areas catering specifically to the needs of automobile oriented trade, such as transient accommodations and services, certain specialized retail outlets, and commercial amusement enterprises. Within the coastal zone, the purpose of the CT zone is to further accommodate tourist commercial, recreational and open space uses....

The area is also subject to the certified Harbor District Specific Area Plan, Subarea A. The Harbor District Specific Area Plan states the subarea “is designated primarily for planned tourist commercial development.” The plan further states:

#### CHAPTER 4. TOURIST COMMERCIAL RECREATION

##### 4.1 LCP Standards, Objectives, and Requirements

At present (mid-1998), the Harbor District offers no tourist or other commercial recreational facilities. However, the designation in the certified Local Coastal Program (“LCP”) Land Use Plan of the two major subareas within the Planning Area for tourist commercial recreational uses is central to redevelopment of the Harbor District from its present deteriorated conditions. The LCP assigns highest priority to overnight lodging, boating, and associated secondary uses in these areas.

To implement a coherent, attractive, and functional recreational commercial reuse of the Planning area, the LCP identifies Subarea A for planned tourist commercial development. Hotel or motel facilities, restaurants, and other tourist commercial uses are noted by the certified Land Use Plan (LUP) as appropriate uses in this subarea between Paradise Marsh and W. 24<sup>th</sup> Street, immediately west of I-5....

##### 4.2 Tourist Commercial Redevelopment

This Plan implements the guidance of the certified LCP with regard to furthering economically feasible, attractive, and environmentally sustainable commercial recreational redevelopment in Subareas A and B through the following provisions:

- (d) Planned commercial development is permitted within the building envelopes shown in Subarea A (see Figure 4.1). It may include a lodging facility, a restaurant, and/or tourist-commercial retail space...

Applicable policies of Chapter 3 include the following:

##### Section 30213

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

##### Section 30222

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

The specific permitted uses in the CT designation are listed in the City's Zoning Code, and consist of outdoor commercial recreation; eating places; gas stations; hotel, motel, and related services; and offices and studios. The City's definition of "hotel, motel, and related services" includes apartment hotels, auto rental, banquet facilities, barber shops, beauty shops, bicycle rentals, boarding houses, convention centers, hotels, meeting rooms, motels, shoe shine shops, and travel agencies. "Offices and studios," includes schools, studios, and colleges, but only as an accessory use to a recreational or tourist oriented development. The permitted uses are further defined in the LUP, IP, and Specific Plan as noted above, to include tourist-commercial retail space.

The proposed professional college is not an accessory use to a recreational or tourist oriented development, nor does it not fall under any of the other permitted uses in the CT designation.

In its approval of the permit, the City of National City made the following findings:

...it would appear that use of the building as a school is not a use strictly related to a recreational or tourist-oriented development. However given the capacity of the Marina Gateway Development to support small conferences (in the hotel and banquet facility space) the applicant states that the proposed education use could support the potential for certain types of conferences (a tourism-related use), such as those related to healthcare. Furthermore, given the small size of the college, it could be seen as a draw for other visitors for conferences and the like....

The applicant[s]...also cite other ancillary benefits, as the college will be training dental technicians (among others) and will be offering dental checkups and cleaning services to the community at reduced rates. The overarching factor for the applicant is that they have unsuccessfully tried to lease the space to a tourism-related business since construction.

In order to address potential concerns over loss of tourist-related leasable space, the applicant has agreed to limit the life of the CUP and related permits to 10 years.

However, while a dental school may provide benefits to the community, the use is nevertheless not a tourist-commercial use, and is not permitted in the CT zone. As described in the above-cited LCP sections, the subject site was specifically designated for tourist-commercial and recreational commercial development as the gateway to the bayfront and marina area, and as a scenic area next to Paradise Marsh.

The City of National City's coastal zone is relatively small in size, comprising 575 acres, the bulk of which is designated for and developed with Industrial Uses (see Exhibit #2). With the exception of the area bordering the National City Marina, the actual shoreline of National City is entirely within Navy or Port of San Diego jurisdiction. The LCP specifically notes that there is only one area with the potential for (near) waterfront tourist commercial recreational facilities, and that area is west of Interstate 5, south of Bay Marina Drive, adjacent to Paradise Marsh, which includes the subject site. In total, there are only approximately 30 acres of land designated Tourist Commercial, including

the 7.5 acre subject site. Thus, it is particularly important that the City's limited opportunities for tourist-oriented development are preserved. The LCP policies were designed to create a small node of tourist-oriented uses supporting each other in a concentrated area near the City's only bayfront area. Committing the subject building to non-priority uses for at least the next 10 years would further reduce the already extremely limited area designated for priority uses in the City's coastal zone, and may discourage the development of other tourist commercial businesses.

According to the City, most of the existing structure has been vacant since it was constructed in 2009, and the Commission appreciates the City's interest in promoting a viable business on the subject site. However, expanding the definition of Tourist Commercial to allow businesses whose members may at some point attend a convention, would render the definition so broad as to make it inadequate to serve the Coastal Act and LCP goals of prioritizing visitor-serving commercial recreation. Allowing the proposed use to go forward even for a 10 year period would set an adverse precedence for future development in the City's limited tourist-commercial designated area.

There has been no evidence presented by the applicant that City has an excess number or capacity of tourist-related uses in the coastal zone or elsewhere in the City. However, if it can be demonstrated that there is an adequate supply of such uses, or that the subject site cannot support CT uses and that there is other land area in the coastal zone that would be more appropriately designated for these high-priority uses, the City could pursue an LCP Amendment to expand the allowable uses on the subject site. Prior to that review and analysis, allowing uses inconsistent with the certified LCP through the permit process would undermine the integrity of the City's LCP, and set a negative precedence for future development in the other remaining CT zone.

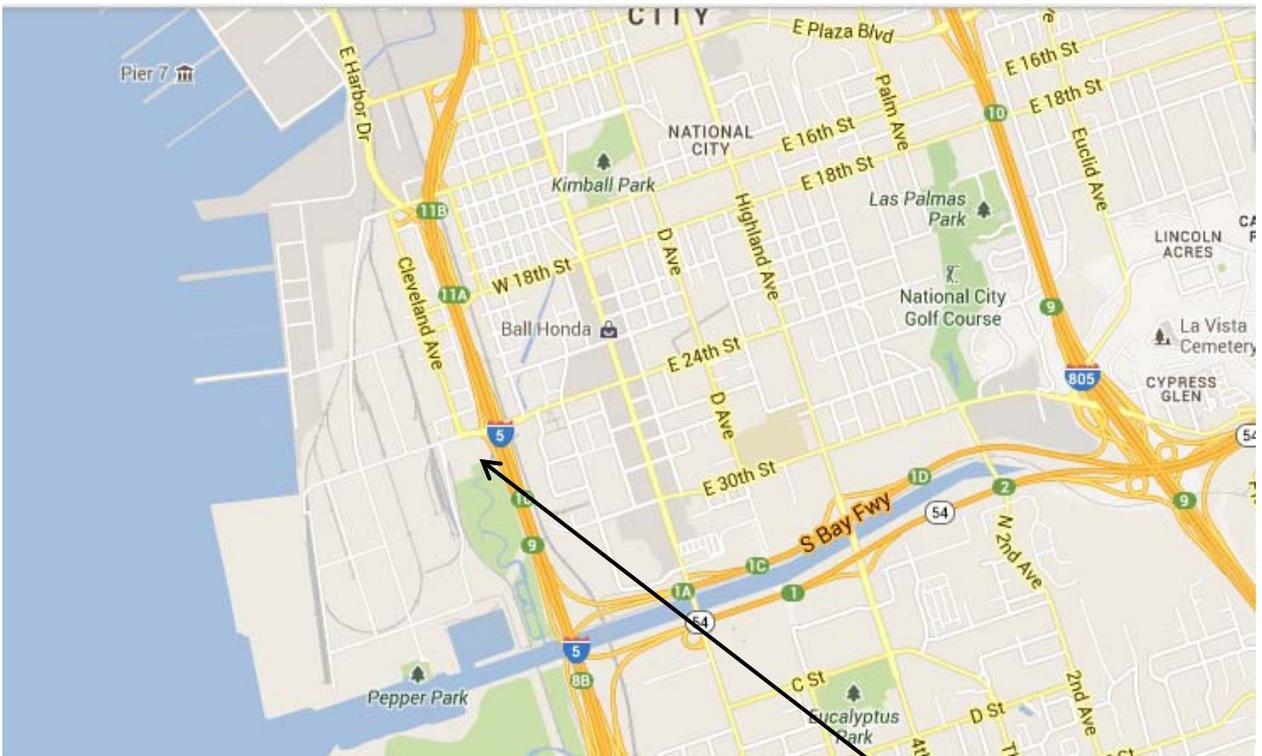
Therefore, the appeal raises a substantial issue with regards to the appellants' contentions.

### **C. SUBSTANTIAL ISSUE FACTORS**

As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance and the decision creates a poor precedent with respect to the allowable uses in a designated tourist commercial zone. In addition, the coastal resources potentially affected by the decision—including the loss of limited area suitable for high-priority uses, are significant.

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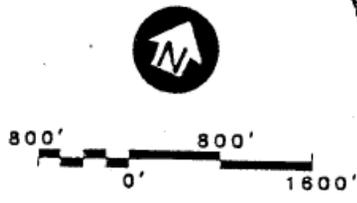
SUBSTANTIVE FILE DOCUMENTS: Appeal by Commissioners Sanchez and Bochco filed 6/20/13; Certified National City Local Coastal Program.



Site



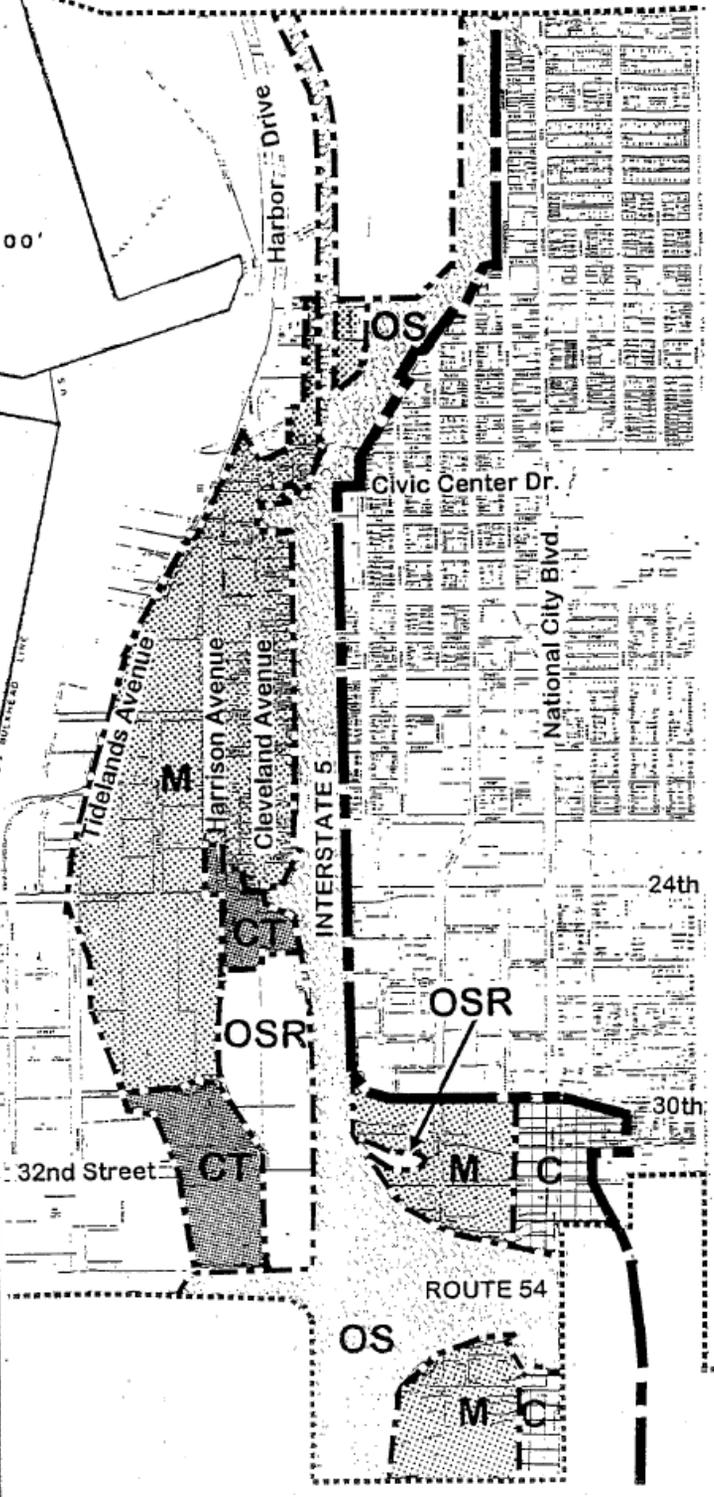
EXHIBIT NO. 1
APPLICATION NO.
<b>A-6-NLC-13-0211</b>
Location Map
 California Coastal Commission



SAN DIEGO BAY

**LEGEND**

- Industrial
- Commercial Automotive
- Tourist Commercial/Recreation
- Open Space (Freeway, Trolley, Flood Control Channel R.O.W.)
- Open Space Wetland Preserve



CITY OF CHULA VISTA

# NATIONAL CITY PLAN

EXHIBIT NO. 2  
APPLICATION NO.  
A-6-NLC-13-0211

DRAWN BY:  
JC  
9.24.98

FIGURE 1  
LAND USE PLAN

Certified Land Use Map

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
 175 METROPOLITAN DRIVE, SUITE 103  
 SAN DIEGO, CA 92108-4402  
 (619) 767-2370



APPEAL FROM COASTAL PERMIT  
 DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)Name: Commissioner Dayna Bochco

Mailing Address: 45 Fremont St.  
Suite 2000  
San Francisco, CA 94105

Phone Number: (415) 904-5200

RECEIVED

JUN 20 2013

CALIFORNIA  
 COASTAL COMMISSION  
 SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

1. Name of local/port government: City of National City
2. Brief description of development being appealed: Remove condition on existing coastal development permit restricting uses on the ground floor of a 14,300 sq.ft. two-story office/commercial building to tourist-commercial uses, to allow a professional college within 5,600 sq.ft. of the first floor, and 6,300 sq.ft. on the upper floor. The term of the permit is limited to 10 years.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
700 Bay Marina Drive, National City, San Diego County. APN 559-160-33
4. Description of decision being appealed:
  - a. Approval; no special conditions:
  - b. Approval with special conditions:
  - c. Denial:
  - d. Other:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-NLC-13-0211DATE FILED: June 20, 2013DISTRICT: San Diego

EXHIBIT NO. 3
APPLICATION NO. A-6-NLC-13-0211
Commission Appeals
California Coastal Commission

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator                      c.  Planning Commission
- b.  City Council/Board of Supervisors                              d.  Other

Date of local government's decision: June 4, 2013

Local government's file number (if any): 2013-07 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Marina Gateway Development, LLC  
c/o Mike Rookus  
2 Kwaaypaay Court  
El Cajon, CA 92019

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

See Attachment #1

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

*See Attachment "A" dated 6/20/2013*

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *[Signature]*  
Appellant or Agent

Date: 6/19/2013

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment A

06/20/2013

Project Description and History

The original Marina Gateway Plaza coastal development project was approved by the National City Planning Commission on August 29, 2005 (Case File No. CDP-2005-2). The project included construction of a 173-room hotel, a 4,000 sq.ft. restaurant, and an approximately 16,000 sq.ft. two-story retail commercial building on a 7.5 acre vacant site west of Interstate 5, just north of Paradise Marsh, in the City of National City. The subject site is zoned and designated CT-PD-CZ (Tourist Commercial, Planned Development, Coastal Zone) in the certified Local Coastal Program.

The subject permit would remove Condition of Approval No. 55 of the Coastal Development Permit for the Marina Gateway Development. This condition states:

55. Any office use of the ground floor of the retail commercial building, except retail travel/tourism offices, is prohibited.

The development was completed several years ago and the hotel and restaurant are currently in operation. The purpose of removing the condition would be to permit a professional college in suites on the both the ground floor (5,600 sq.ft.) and the upper floor (6,300 sq.ft.) of the retail commercial building located in the Marina Gateway development. The terms of the Planned Development Permit, Conditional Use Permit, and Coastal Development Permit approved by the City are limited to 10 years. However, the CT-PD-CZ designation does not permit office or college uses such as those proposed.

Consistency with the LCP

There are only two areas in the City of National City's coastal zone that are designated for tourist commercial use; the subject site, and a parcel located approximately one-quarter mile south of the subject site, north of the National City Marina. The CT designation permits uses such as outdoor commercial recreation; eating places; gas stations; hotel, motel, and related services; and offices and studios (only as an accessory use to a recreational or tourist oriented development). Regarding the subject site, the certified LUP states:

Tourist commercial development at 24<sup>th</sup> Street north of Paradise Marsh would provide a gateway to National City's Bayfront as well as to the Port. It would provide facilities such as restaurants, hotel or motel and other complementary uses to those intended at the bayfront itself, west of Paradise Marsh. It would be developed to encourage bicycle and pedestrian users since it is within close proximity to both the trolley station and the recreational area along the Sweetwater River Channel.

The City's certified Implementation Plan states:

...the purpose of the CT zone is to provide areas catering specifically to the needs of automobile oriented trade, such as transient accommodations and services, certain specialized retail outlets, and commercial amusement enterprises. Within the coastal zone, the purpose of the CT zone is to further accommodate tourist commercial, recreational and open space uses....

The area is also subject to the certified Harbor District Specific Area Plan, Subarea A. The Harbor District Specific Area Plan states the subarea "is designated primarily for planned tourist commercial development." The plan further states:

At present (mid-1998), the Harbor District offers no tourist or other commercial recreational facilities. However, the designation in the certified Local Coastal Program ("LCP") Land Use Plan of the two major subareas within the Planning Area for tourist commercial recreational uses is central to redevelopment of the Harbor District from its present deteriorated conditions. The LCP assigns highest priority to overnight lodging, boating, and associated secondary uses in these areas.

To implement a coherent, attractive, and functional recreational commercial reuse of the Planning area, the LCP identifies Subarea A for planned tourist commercial development. Hotel or motel facilities, restaurants, and other tourist commercial uses are noted by the certified Land Use Plan (LUP) as appropriate uses in this subarea between Paradise Marsh and W. 24<sup>th</sup> Street, immediately west of I-5.

The specific use proposed to occupy the existing building would be a college for students specializing in Healthcare Training (e.g., Vocational/Practical Nursing; Medical Assisting, Respiratory Therapy, Dentistry, etc.). This use is neither a tourist commercial or recreational use as described in the LCP, and thus, is not an allowable use on the site.

In its approval of the permit, the City of National City made the following findings:

...it would appear that use of the building as a school is not a use strictly related to a recreational or tourist-oriented development. However given the capacity of the Marina Gateway Development to support small conferences (in the hotel and banquet facility space) the applicant states that the proposed education use could support the potential for certain types of conferences (a tourism-related use), such as those related to healthcare. Furthermore, given the small size of the college, it could be seen as a draw for other visitors for conferences and the like....

The applicant[s]...also cite other ancillary benefits, as the college will be training dental technicians (among others) and will be offering dental checkups and cleaning services to the community at reduced rates. The overarching factor for the applicant is that they have unsuccessfully tried to lease the space to a tourism-related business since construction.

In order to address potential concerns over loss of tourist-related leasable space, the applicant has agreed to limit the life of the CUP and related permits to 10 years.

However, while a dental school may provide benefits to the community, the subject site was specifically designated for tourist-commercial and recreational commercial development as the gateway to the bayfront and marina area, and as a scenic area next to Paradise Marsh. The subject building contains approximately 14,300 sq.ft. of leasable space. The proposed college would use 11,900 sq.ft. of that space, which is all of the remaining space in the building (2,000 sq.ft. on the ground floor is currently leased to the adjacent Buster's Restaurant, and 1,400 sq.ft. of the upper floor was recently leased to an engineering firm), thus ensuring that no tourist-related uses would be able to use the great majority of the building space for at least the next 10 years.

The subject permit condition was made a condition of approval for the commercial retail structure specifically to ensure that a minimum amount of tourist-related high priority uses are provided and preserved in a community that currently has almost no tourist-related uses in the coastal zone. Removal of the condition is inconsistent with the land use designation and the policies of the certified LCP that protect and prioritize tourist-commercial uses.

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
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19) 767-2370



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Esther Sanchez  
Mailing Address: Oceanside City Council  
City of Oceanside  
300 North Coast Hwy  
Oceanside, CA 92054

RECEIVED

JUN 20 2013

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Phone Number: 760) 435-0971

SECTION II. Decision Being Appealed

1. Name of local/port government: City of National City
2. Brief description of development being appealed: Remove condition on existing coastal development permit restricting uses on the ground floor of a 14,300 sq.ft. two-story office/commercial building to tourist-commercial uses, to allow a professional college within 5,600 sq.ft. of the first floor, and 6,300 sq.ft. on the upper floor. The term of the permit is limited to 10 years.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
700 Bay Marina Drive, National City, San Diego County. APN 559-160-33
4. Description of decision being appealed:
  - a. Approval; no special conditions:
  - b. Approval with special conditions:
  - c. Denial:
  - d. Other:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-NLC-13-0211

DATE FILED: June 20, 2013

DISTRICT: San Diego

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator                      c.  Planning Commission
- b.  City Council/Board of Supervisors                                      d.  Other

Date of local government's decision: June 4, 2013

Local government's file number (if any): 2013-07 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Marina Gateway Development, LLC  
c/o Mike Rookus  
2 Kwaaypaay Court  
El Cajon, CA 92019

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

See Attachment #1

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated 6/20/2013

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Etter C. Amody  
Appellant or Agent

Date: 6/19/2013

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment A

06/20/2013

Project Description and History

The original Marina Gateway Plaza coastal development project was approved by the National City Planning Commission on August 29, 2005 (Case File No. CDP-2005-2). The project included construction of a 173-room hotel, a 4,000 sq.ft. restaurant, and an approximately 16,000 sq.ft. two-story retail commercial building on a 7.5 acre vacant site west of Interstate 5, just north of Paradise Marsh, in the City of National City. The subject site is zoned and designated CT-PD-CZ (Tourist Commercial, Planned Development, Coastal Zone) in the certified Local Coastal Program.

The subject permit would remove Condition of Approval No. 55 of the Coastal Development Permit for the Marina Gateway Development. This condition states:

55. Any office use of the ground floor of the retail commercial building, except retail travel/tourism offices, is prohibited.

The development was completed several years ago and the hotel and restaurant are currently in operation. The purpose of removing the condition would be to permit a professional college in suites on the both the ground floor (5,600 sq.ft.) and the upper floor (6,300 sq.ft.) of the retail commercial building located in the Marina Gateway development. The terms of the Planned Development Permit, Conditional Use Permit, and Coastal Development Permit approved by the City are limited to 10 years. However, the CT-PD-CZ designation does not permit office or college uses such as those proposed.

Consistency with the LCP

There are only two areas in the City of National City's coastal zone that are designated for tourist commercial use; the subject site, and a parcel located approximately one-quarter mile south of the subject site, north of the National City Marina. The CT designation permits uses such as outdoor commercial recreation; eating places; gas stations; hotel, motel, and related services; and offices and studios (only as an accessory use to a recreational or tourist oriented development). Regarding the subject site, the certified LUP states:

Tourist commercial development at 24<sup>th</sup> Street north of Paradise Marsh would provide a gateway to National City's Bayfront as well as to the Port. It would provide facilities such as restaurants, hotel or motel and other complementary uses to those intended at the bayfront itself, west of Paradise Marsh. It would be developed to encourage bicycle and pedestrian users since it is within close proximity to both the trolley station and the recreational area along the Sweetwater River Channel.

The City's certified Implementation Plan states:

...the purpose of the CT zone is to provide areas catering specifically to the needs of automobile oriented trade, such as transient accommodations and services, certain specialized retail outlets, and commercial amusement enterprises. Within the coastal zone, the purpose of the CT zone is to further accommodate tourist commercial, recreational and open space uses....

The area is also subject to the certified Harbor District Specific Area Plan, Subarea A. The Harbor District Specific Area Plan states the subarea "is designated primarily for planned tourist commercial development." The plan further states:

At present (mid-1998), the Harbor District offers no tourist or other commercial recreational facilities. However, the designation in the certified Local Coastal Program ("LCP") Land Use Plan of the two major subareas within the Planning Area for tourist commercial recreational uses is central to redevelopment of the Harbor District from its present deteriorated conditions. The LCP assigns highest priority to overnight lodging, boating, and associated secondary uses in these areas.

To implement a coherent, attractive, and functional recreational commercial reuse of the Planning area, the LCP identifies Subarea A for planned tourist commercial development. Hotel or motel facilities, restaurants, and other tourist commercial uses are noted by the certified Land Use Plan (LUP) as appropriate uses in this subarea between Paradise Marsh and W. 24<sup>th</sup> Street, immediately west of I-5.

The specific use proposed to occupy the existing building would be a college for students specializing in Healthcare Training (e.g., Vocational/Practical Nursing; Medical Assisting, Respiratory Therapy, Dentistry, etc.). This use is neither a tourist commercial or recreational use as described in the LCP, and thus, is not an allowable use on the site.

In its approval of the permit, the City of National City made the following findings:

...it would appear that use of the building as a school is not a use strictly related to a recreational or tourist-oriented development. However given the capacity of the Marina Gateway Development to support small conferences (in the hotel and banquet facility space) the applicant states that the proposed education use could support the potential for certain types of conferences (a tourism-related use), such as those related to healthcare. Furthermore, given the small size of the college, it could be seen as a draw for other visitors for conferences and the like....

The applicant[s]...also cite other ancillary benefits, as the college will be training dental technicians (among others) and will be offering dental checkups and cleaning services to the community at reduced rates. The overarching factor for the applicant is that they have unsuccessfully tried to lease the space to a tourism-related business since construction.

In order to address potential concerns over loss of tourist-related leasable space, the applicant has agreed to limit the life of the CUP and related permits to 10 years.

However, while a dental school may provide benefits to the community, the subject site was specifically designated for tourist-commercial and recreational commercial development as the gateway to the bayfront and marina area, and as a scenic area next to Paradise Marsh. The subject building contains approximately 14,300 sq.ft. of leasable space. The proposed college would use 11,900 sq.ft. of that space, which is all of the remaining space in the building (2,000 sq.ft. on the ground floor is currently leased to the adjacent Buster's Restaurant, and 1,400 sq.ft. of the upper floor was recently leased to an engineering firm), thus ensuring that no tourist-related uses would be able to use the great majority of the building space for at least the next 10 years.

The subject permit condition was made a condition of approval for the commercial retail structure specifically to ensure that a minimum amount of tourist-related high priority uses are provided and preserved in a community that currently has almost no tourist-related uses in the coastal zone. Removal of the condition is inconsistent with the land use designation and the policies of the certified LCP that protect and prioritize tourist-commercial uses.

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
375 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



May 3, 2013

Martin Reeder, AICP  
City of National City  
Development Services Department  
1243 National City Blvd.  
National City, CA 91950

Re: Case File No. 2013-07 PD, CUP, CDP

Dear Mr. Reeder:

Commission staff has reviewed the Planning Commission staff report for the above referenced project, and have the following comments. The project consists of an application to remove Condition of Approval No. 55 of the Coastal Development Permit for the Marina Gateway Development (Case File No. CDP-2005-2). This condition states:

55. Any office use of the ground floor of the retail commercial building, except retail travel/tourism offices, is prohibited.

The purpose of removing the condition would be to permit a professional college in suites on the both the ground floor (5,600 sq.ft.) and the upper floor (6,300 sq.ft.) of the retail commercial building located in the Marina Gateway development.

The subject site is designated Commercial Tourist (CT) in the certified LCP. As noted in the staff report, the proposed college is not a tourist commercial use. The LCP Implementation Plan states:

Section III. Commercial Zones

B. Uses Permitted

- a. Offices and Studios (Use Group 27) shall be permitted **only as an accessory use to a recreational use or tourist-oriented development.** [Emphasis added]

The City's Land Use Code includes "Schools, Studios, and Colleges" under Use Group 27. The staff report then quotes a portion of the Land Use Code definition of "accessory use" and suggests that the proposed college could be considered an accessory use because it would be located on the same lot as the principle use. However, the complete definition of "accessory use" in the Code is as follows:

EXHIBIT NO. 4
APPLICATION NO. <b>A-6-NLC-13-0211</b>
Staff Comment
Letters
 California Coastal Commission

#### Accessory Use

“Accessory use” is a use conducted on the same lot as the principal use or structure **to which it is related**, except that where specifically provided in the parking and loading regulations, accessory off-street parking or loading need not be located on the same lot; **and a use which is clearly incidental to and customarily found in connection with such principal use**, and which is either in the same ownership as such principal use or is maintained and operated on the same lot **substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use**. [Emphasis added].

Thus, the Code clearly requires that an accessory use be related to, incidental to, customarily found in connection with, or for the benefit of the principal use or structure. Furthermore, the City’s certified Implementation Plan, which is the standard of review for coastal development permits, states, in Section III. Commercial Zones, subsection (B):

#### 2. Accessory uses.

Section 18.16.100 of the Land Use Code provides for accessory use and buildings **customarily incidental to a permitted use** in commercial zones. [Emphasis added].

The permitted and principal use on the subject lot is Tourist Commercial, specifically, hotel and commercial retail. An example of a permitted Office accessory use might be offices associated with a hotel or store, or development such as a travel agency, or perhaps a tourist-oriented real estate company. The proposed medical college is not related to, incidental to, customarily incidental to, or for the benefit of any Tourist Commercial use on the site. Thus, the proposed use is not an accessory use, and is not consistent with the policies of the certified LCP.

The City has very limited area designated for high-priority Commercial Tourist uses, and the City's permitted uses in the CT zone in the Coastal Zone are fairly expansive (for example, boat marinas and supportive commercial and recreational businesses are permitted). Subarea A in the Harbor District Specific Plan was specifically designated for tourist-commercial and recreational commercial development as the gateway to the bayfront and marina area, and as a scenic area next to Paradise Marsh. The subject permit condition was put on the project specifically to ensure that a minimum amount of tourist-related high priority uses are provided and preserved. Removal of the condition is inconsistent with the land use designation and the policies of the certified LCP that protect and prioritize tourist-commercial uses.

Commission staff asks the City to recognize and adhere to the requirements of the certified LCP, and to protect the limited area in the City that has been designated for high priority tourist commercial uses, by rejecting the proposed coastal development permit request.

May 3, 2013

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Thank you for the opportunity to comment, and please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Diana Lilly". The signature is written in black ink and is positioned above the printed name.

Diana Lilly  
Coastal Planner

(G:\San Diego\DIANA\National City\Marina Gateway professional college cdp\Marina Gateway Professional College permit amendment.doc)

Lilly, Diana@Coastal

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**From:** Lilly, Diana@Coastal  
**Sent:** Friday, March 22, 2013 12:52 PM  
**To:** Martin Reeder (mreeder@nationalcityca.gov)  
**Subject:** Comments on the City's review of 2013-07 CDP for a professional college in a retail commercial building at 700 Bay Marina Drive

The proposed project would remove a condition from CDP 2005-2 that states "Any office use of the ground floor of the retail commercial building, except retail travel/tourism offices, if prohibited." Because this is a condition of an existing permit, it appears the proposed project should be processed as or include an amendment to the existing permit.

The City has very limited area designated for high-priority Commercial Tourist (CT) uses, and the City's permitted uses in the CT zone in the Coastal Zone are fairly expansive (for example, boat marinas and supportive commercial and recreational businesses are permitted). Subarea A in the Harbor District Specific Plan was specifically designated for tourist-commercial and recreational commercial development as the gateway to the bayfront and marina area, and as a scenic area next to Paradise Marsh. The above restriction was put on the project to ensure that only tourist-commercial and recreational commercial development could occur on the ground floor, to ensure that a minimum amount of these high priority uses are provided and preserved. Furthermore, the LCP specifically states that Use Group 27 Offices and Studios (which includes schools and colleges) are permitted "only as an accessory use to a recreational or tourist-oriented development." That is, offices associated with a development such as a travel agency or perhaps a tourist-oriented real estate company, may be allowed in the CT zone. The proposed college is not a recreational or tourist-oriented development; thus, allowing this use in the CT zone would not be consistent with the certified LCP. Therefore, it is unlikely that Commission staff could support the proposed removal of the permit condition.

The project is located within an area appealable to the Coastal Commission, so all public notices for the CDP should indicate that the project is appealable.

As always with appealable projects, I greatly appreciate it when City staff sends me as much substantive info. as you have, such as plans, staff reports, environmental docs, alternative analyses, etc. at the time the Notice of Final Action is mailed (we only need the entire file if an appeal is actually filed). Having that information up front expedites our review of the project considerably.

Thank you for the opportunity to comment on the project.

Diana Lilly  
Coastal Planner

7575 Metropolitan Drive, Suite 103  
San Diego, CA 92119  
Phone (619) 767-2370 fax (619) 767-2384  
[diana.lilly@coastal.ca.gov](mailto:diana.lilly@coastal.ca.gov)