

CALIFORNIA COASTAL COMMISSION

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Staff: WNP-SD
Staff Report: 11/5/98
Hearing Date: 12/8-11/98

REVISED FINDINGS*Th 10h*

APPLICATION NO.: A-6-CII-98-98

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approved With Conditions

APPLICANT: John Levy

Agent: Bob Sukup

DESCRIPTION: Construction of a 30-foot high, 2,713 sq. ft. single-family residence and a 35-foot high, 1,633 sq. ft. detached garage with a 577 sq. ft. second unit above on a 1.9 acre lot of a 2.6 acre site. Estimated grading quantities include 75 cubic yards of cut and 75 cubic yards of fill to be balanced on-site. Also proposed is off-site private access improvements, the replacement of a gate and fencing on the site.

PROJECT LOCATION: The south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive, Carlsbad, San Diego County. APN 155-190-13, APN 155-101-65

APPELLANTS: California Coastal Commissioners Christine Kehoe and Pedro Nava

DATE OF COMMISSION ACTION: September 11, 1998

COMMISSIONERS ON PREVAILING SIDE: Herron, Flemming, Johnson, Potter, Reilly, and Chairman Areias

SUMMARY OF COMMISSION ACTION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action on September 11, 1998 finding no substantial issue exists with respect to the grounds on which the appeal was filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Local Coastal Program Mello II segment; City of Carlsbad CDP 97-59, CDP #6-83-51

NO SUBSTANTIAL ISSUE – RESOLUTION

The Commission adopted the following resolution and findings following the public hearing:

AG 11
The Commission hereby determines that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to Section 30603.

Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. Proposed is the construction of a 30-foot high, 2,713 sq. ft. single-family residence and a 35-foot high, 1,633 sq. ft. detached garage with a 577 sq. ft. second-unit above on one lot of a 2.6 acre site. Estimated grading quantities include 75 cubic yards of cut and 75 cubic yards of fill to be balanced on-site. Also proposed is off-site private access improvements, fencing of the site and replacement of an existing gate. The 2.6 acre project site is comprised of two lots located along the south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive in northern Carlsbad. The project site is vacant and is covered with disturbed shrub habitat. There are no steep slopes or native vegetation on the project site. Fresh water marsh occurs on the northwest and eastern boundaries of the site below the riprap line. An existing unimproved lagoon trail is located around the outer edge of the property running from its western edge and continuing to circle the site like a loop. The AT&SF railroad right-of-way lies to the east of the site, and multi-family housing is located to the south of the project site. The site is designated Residential Low (RL, 0-1.5 du/ac) and zoned R-1-30,000 in the certified Mello II LCP.

2. Protection of Visual Resources. The project site is located at the confluence of the mouth of Buena Vista Lagoon and the Pacific Ocean at the boundary between the cities of Carlsbad and Oceanside. Although there is existing development in the area, because of the site's unique setting adjacent to the lagoon, it is like no other site in Carlsbad. Open waters of Buena Vista Lagoon are on the west side of the site with some riprap on the banks; fresh water marsh associated with lagoon environs occurs on the northwest and eastern boundaries of the site below the riprap line. The property is vacant and an existing unimproved lagoon trail is located along its western edge and circles the site like a loop.

The following policies and goals of the certified Mello II LCP address protection of public views and are applicable to the proposed development:

Policy 8-1

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad Coastal Zone to assure maintenance of existing views and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize any alterations to topography.

Policy 3-2 of the Mello II LCP also requires that development be clustered to preserve open space for habitat protection, which also serves to minimize the visual impacts of new development.

In addition, Section 21.40.135 of the City's certified LCP Implementation Plan is applicable to the proposed development and states, in part:

Within the coastal zone, existing public views and panorama shall be maintained. Through the individualized review process, sites considered for development shall be conditioned so as to not obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitations and see-through construction techniques should be employed. Shoreline development shall be built in clusters to leave open areas around them to permit more frequent views of the shoreline. Vista points shall be incorporated as a part of larger projects.

Additionally, Section 21.204.100 (B & C) of the Coastal Shoreline Development Overlay Zone of the City's certified LCP is applicable and states:

- B. Appearance – Buildings and structures will be so located on the site as to create a generally attractive appearance and be agreeably related to surrounding development and the natural environment.
- C. Ocean Views – Buildings, structures, and landscaping will be so located as to preserve the degree feasible any ocean views as may be visible from the nearest public street.

The proposed 2,713 sq. ft. residence is over 30 feet tall, consists of two-stories, and features a copper-colored metal roof and concrete block walls. Also proposed is a 1,633 sq. ft. detached garage with a 577 sq. ft. second-unit above that will be 35 feet in height. Second dwelling units are addressed in the City's LCP. As approved in the LCP, such units are allowed by right subject to restrictions on size (650 sq. ft. maximum), affordability, etc. Second units must also meet all the requirements of the local coastal program, with the exception of base density.

The subject site is visible from the beach, the railroad and portions of Old Highway 101 (Carlsbad Boulevard), which is designated as a Scenic Road in the LCP. Old Highway 101 is heavily used by beachgoers to get to the beaches of northern Carlsbad. Existing

cattails and the elevated railroad berm are high enough to block views to the west from the portion of Old Highway 101 that is along side the site. The site is however, visible both from the highway as it descends south from the City of Oceanside into Carlsbad and at a point close to the Buena Vista Lagoon pump station going north on the highway. As noted above, the approximately 2.6 acres under the applicant's ownership constitutes a unique, low-lying area immediately adjacent to the lagoon where no development has occurred. As such, the proposed project, consisting of two large structures located directly adjacent to the lagoon, has the potential to adversely impact public views in this scenic area by presenting a significant structure in an otherwise natural setting.

Policy 8-1 of the City's LCP provides that the Scenic Preservation Overlay Zone should be applied where necessary to assure the maintenance of existing views and panoramas and that sites be evaluated for potential public views that should be preserved and enhanced. Its purpose is to provide regulations in areas which possess outstanding scenic qualities or would create buffers between incompatible land uses which enhance the appearance of the environment and contribute to community pride and community prestige. The subject site does not represent an infill area but rather should be viewed as an extension of development northward at a critical scenic interface between the ocean and the lagoon, which is visible from Highway 101. The City has indicated that the Scenic Protection Overlay Zone is only applied to properties and projects that are visible from El Camino Real. The subject site is not visible from El Camino Real. Therefore, the City did not apply the requirements of the Overlay Zone to the project. The Commission does not agree that application of the overlay zone within the City's Coastal Zone depends on a site's visibility from El Camino Real. However, the proposed project has been designed to mitigate adverse impacts on views.

The mitigation includes a 100-ft. setback of structures from the lagoon and landscape screening of the proposed structures. In addition, the height of the proposed structures is consistent with both the height limits contained in the certified LCP and the height of other structures in the area. Therefore, the Commission finds that even though the City failed to apply the requirements of the Scenic Preservation Overlay Zone, the intent of these requirements has been satisfied and therefore, the project, as approved by the City, does not raise a substantial issue with regard to consistency with the visual resource policies of the certified LCP. The Commission notes however, that Commission staff and City staff need to work together to assure the Scenic Preservation Overlay Zone is implemented consistent with its certification in the City's LCP.

3. Public Access/Recreation. The Coastal Act contains policies that call for protecting public access to the coast. The following Coastal Act policies are applicable to the proposed development.

Section 30210.

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs

and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211.

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.

(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.

In addition, several policies of the Mello II LCP apply to the project site.

Policy 7-3 - ACCESS ALONG SHORELINE

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat.

Policy 7-6 - BUENA VISTA LAGOON

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon (exhibit 4.10, page 63) to facilitate public awareness of the natural habitat resources of the Lagoon. To protect sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public

agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. In addition, the City of Carlsbad, State Coastal Conservancy and Wildlife Conservation Board shall seek to obtain lateral accessways across developed lands.

The subject site is located between the first public roadway and the sea. The beach area to the west of the project site can be reached via a public access stairway on Ocean Street. To reach the lagoon area immediately adjacent to the subject site, it is apparent that visitors to this area use a well worn path near Mountain View Drive which leads behind tennis courts on the adjacent lot and then down to the lowland area that comprises the subject property. The beach and lagoon areas are currently used by walkers, fishermen and naturalists. As noted above, the Mello II LCP envisions an areawide pathway along the south shoreline of the lagoon. The City of Oceanside is planning pathways on the northern side of the lagoon along with a bird sanctuary. The Department of Fish and Game owns properties on the south side of the lagoon, east of the subject site and on the north side. Because of its location, the project site is at a crucial point in any potential trail linkage between public beach areas and the public lagoon areas.

There is evidence of historic public use of this site. This evidence is the existence of a well-worn path around the perimeter of the site. The path is evident in numerous aerial photographs of the site taken as early as 1972. In recognition of the existing trail on the south side of the lagoon, the City has required that the applicant record an offer to dedicate a public access easement along the south shore of Buena Vista Lagoon, along the western edge of the site consistent with Policy 7-6 of the Mello II LUP. The City's approval also required that the development maintain a 100-foot setback from the lagoon's edge, consistent with input provided by the resource agencies and LCP requirements. This 100-foot setback would then function as a wetland buffer. The existing worn path where the City's required access easement is to be located is within the 100- foot wetland buffer. However, the resource agencies found that the trail was a permitted use within the buffer. However, to provide protection of the adjacent biological resources, the resource agencies also required that the applicant construct a fence at the inland edge of the buffer. The fence will serve to help keep domestic pets out of the buffer area to protect wildlife that occurs near the water's edge.

The City's approval also authorized the installation of a fence along the southern property boundary and a gate across the southern lagoon trail (that is the subject of an offer to dedicate a public access easement). The gate is proposed within a fence on Parcel B, the other lot under the applicant's ownership, which is not proposed for residential development at this time. As approved, the gate would be open from dawn to dusk. The Commission found in a recent permit decision, (Ref. CDP # 6-96-159/Cade), that limiting the hours of public access along the shoreline of Agua Hedionda Lagoon through a time lock gate was inappropriate. In that case, there was substantial evidence of a prescriptive right of access along the shoreline, and there was no evidence of a need for the limitations on hours of access. However, in this case, the subject site and surrounding area suffers from a number of nuisances (vandalism, transients) which warrant that access be closed at dusk to assure privacy and security. Further, access along the south shore is

being dedicated by the applicant consistent with the LCP provisions through a 25-foot wide easement and construction of a 10-foot wide path within the easement. Thus, in this case, the Commission finds that the time-lock gate as approved by the City raises no substantial issue as to conformity with the certified LCP or the public access policies of the Coastal Act.

As stated, the City's approval included replacement of an existing manually operated gate with an electric gate near Mountain View Drive for access for the proposed residence, fire and maintenance vehicular access. The existing fenced and locked gate is located just off Mountain View Drive on property that is not owned by the applicant. However, the applicant has a private access easement over the property. The installation date of the existing gate is unknown. The fence/gate appears on a 1981 tentative map for a neighboring project. In addition, representatives of the City have verbally stated that it has been in place since the 1960s. The gate/fence limits public access from Mountain View Drive to the applicant's site. This gate is where the applicant will take access to the subject site via an existing private access easement. According to the City, this gated access is the only beach vehicle access in northern Carlsbad and has been used by lifeguard personnel and city maintenance crews to maintain the lagoon weir which regulates the water level in Buena Vista Lagoon.

In CDP #6-83-51, the Commission approved the subdivision of the property immediately adjacent to and south of the subject site. The permit allowed subdivision of a 7.65 acre parcel into three lots and construction of 14 condominiums. In its approval of CDP #6-83-51, the Commission required Lot 3, the lot over which the applicant must take access to get to the project site, to be reserved as open space through an offer to dedicate an open space easement. In its open space easement condition, the Commission prohibited all development except for development needed to allow for vehicle access across Lot 3 to the lagoon weir and for public projects that were planned on this low-lying area, including wetland restoration and possibly as a depository site for beach replenishment projects. The condition did not recognize any private vehicular access across Lot 3, which is needed for the applicant to get to the project site. However, the applicant asserts that he has a right of private vehicular access across Lot 3 to the project site through an easement that was initially granted in 1971 and then re-recorded in a slightly different location in 1984. The offer of dedication has not yet been accepted. The Commission finds that at this time, it need not address the legality of the fence or the ability of the landowners to maintain the fence after the offer of dedication has been accepted. The proposed project simply replaces the existing manual gate with an electric gate and therefore, it does not change the existing access. In addition, adequate pedestrian access opportunities exist in the area (as a vertical accessway from Ocean Street to the ocean is located about 500 feet to the north) and the public will still be able to access the beach as they have in the past. Therefore, the Commission finds the development as approved by the City does not raise a substantial issue with regard to consistency with the public access and recreation policies of the certified LCP and Chapter 3 of the Coastal Act.

4. Environmentally Sensitive Habitat Areas.

Policy 3-2 of the certified Mello II LUP addresses the protection of this environmentally sensitive area and provides the following:

Policy 3-2 - Buena Vista Lagoon

Developments located along the first row of lots bordering Buena Vista Lagoon, including the parcel at the mouth of the Lagoon (see Exhibit 4.5, Page 61), shall be designated for residential development at a density of up to 4 dwelling units per acre. Proposed development in this area shall be required to submit topographic and vegetation mapping and analysis, as well as soils reports, as part of the coastal development permit application. Such information shall be provided as a part of or in addition to any required Environmental Impact Report, and shall be prepared by qualified professionals and in sufficient detail to enable the City to locate the boundary of wetland and upland areas and areas of slopes in excess of 25%. Topographic maps shall be submitted at a scale sufficient to determine the appropriate developable areas, generally not less than a scale of 1" - 100' with a topographic contour interval of 5 feet, and shall include an overlay delineating the location of the proposed project. Criteria used to identify wetlands existing on the site shall be those of Section 30121 of the Coastal Act and based upon the standards of the Local Coastal Program Mapping Regulations, and shall be applied in consultation with the State Department of Fish and Game.

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from wetlands shall be required in all development, in order to buffer such sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval. In the event that a wetland area is bordered by steep slopes (in excess of 25%) which will act as a natural buffer to the habitat area, a buffer setback of less than 100 feet in width may be permitted.

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel, which is not within wetlands.

Storm drain alignments as proposed in the Carlsbad Master Drainage Plan which would be carried through or empty in to Buena Vista Lagoon shall not be permitted, unless such improvements comply with the requirements of Sections 30230, 30231, 30233, and 30235 of the Coastal Act by maintaining or enhancing the functional capacity of the lagoon in a manner acceptable to the State Department of Fish and Game.

Land divisions shall only be permitted on parcels bordering the lagoon pursuant to a single planned unit development permit for the entire original parcel.

Additionally, the Coastal Resource Protection Overlay Zone, an implementing ordinance of the City of Carlsbad LCP, contains identical language to Policy 3-2 above with respect to Buena Vista Lagoon.

Numerous other policies of the LCP provide that new development not contribute to erosion and sedimentation of sensitive resources, including Buena Vista Lagoon. Policy 4-3 and Policy 4-6 address this issue.

Policy 4-3 - ACCELERATED SOIL EROSION

(A) Areas West of I-5 and the existing Paseo del Norte and Along El Camino Real Upstream of Existing Storm Drains

For areas west of the existing Paseo del Norte, west of I-5 and along El Camino Real immediately upstream of the existing storm drains, the following policy shall apply:

A site specific report prepared by a qualified professional shall be required for all proposed development, identifying mitigation measures needed to avoid increased runoff and soil erosion. The report shall be subject to the requirements of the model erosion control ordinance contained in the appendix to the Carlsbad Master Drainage Plan (June, 1980), and to the additional requirements contained herein. Such mitigation shall become an element of the project, and shall be installed prior to initial grading. At a minimum, such mitigation shall require construction of all improvements shown in the Master Drainage Plan for the area between the project site and the lagoon (including a debris basin), as well as restriction of grading activities to the months of April through September of each year; revegetation of graded areas immediately after grading; and a mechanism for permanent maintenance if the City declines to accept the responsibility. Construction of drainage improvements may be through formation of an assessment district, or through any similar arrangement that allots costs among the various landowners in an equitable manner.

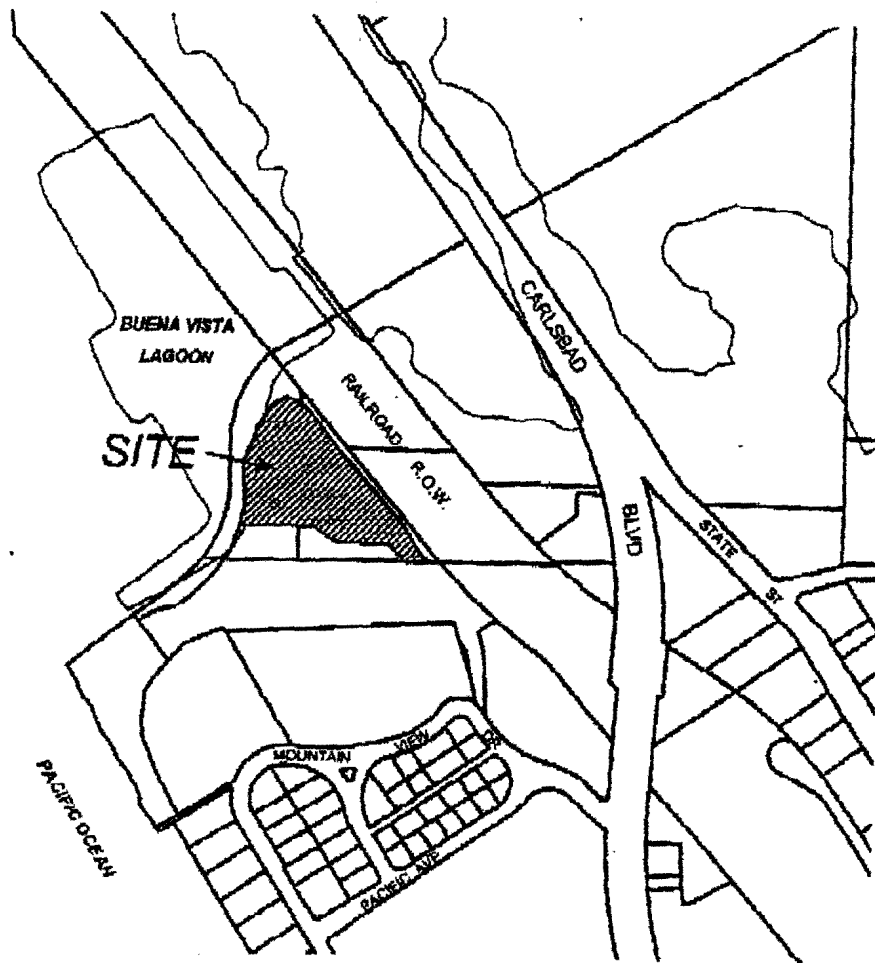
Policy 4-6 - SEDIMENT CONTROL PRACTICES

Apply sediment control practices as a perimeter protection to prevent off-site drainage. Preventing sediment from leaving the site should be accomplished by such methods as diversion ditches, sediment traps, vegetative filters, and sediment basins. Preventing erosion is of course the most efficient way to control sediment runoff.

The 2.6-acre project site consists of two lots located along the south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive in northern Carlsbad. The project site is covered with disturbed shrub habitat. There are no steep slopes or native vegetation on the project site. Fresh water marsh occurs on the northwest and eastern boundaries of the site below the riprap line.

In recognition of the sensitive nature of the project area, the City approved the project with several conditions regarding the protection of coastal resources. The City found that the project was consistent with the certified Mello II Coastal Resource Protection Overlay Zone (Chapter 21.203 of the zoning ordinance) in that the project would adhere to the City's Master Drainage and Storm Water Quality Management Plan and Grading Ordinance to avoid increased runoff and soil erosion, no steep slopes or native vegetation is located on the subject property and, the site is not located in an area prone to landslides, or susceptible to accelerated erosion, floods or liquefaction. The adjacent Buena Vista Lagoon wetlands have been delineated and the project has been designed to include a minimum 100-foot setback (buffer) between the wetlands and all structures. The City's approval required the applicant to record an open space deed restriction over the entire wetland buffer setback area and to make an irrevocable offer of dedication of the wetlands buffer to the California Department of Fish and Game (although public access through the buffer is provided via a public access easement required by the City).

Although the existing vegetation on the site consists primarily of non-native grasses and weeds, two regionally significant habitats, a coastal lagoon and freshwater marsh community, do occur near the subject property. Thus, activities on the property could affect the quality of these habitats. Buena Vista Lagoon provides nesting and foraging habitat for the California least tern and other avian species, although the quality of this habitat is decreasing due to continuous development along the edge of the lagoon. The City approved a sedimentation catch basin on the southeast corner of the site, which will direct surface runoff to the east of the site within the freshwater marsh, which is part of Buena Vista Lagoon. Policy 3-2 provides that no direct discharges to the lagoon can occur without approval of the Department of Fish and Game. Although that permission has not been obtained from the Department in writing, the Department has indicated it can accept drainage entering the marsh as the discharge is relatively minor and the project proposes concrete surfaces rather than asphalt which adversely affects water quality. Thus, the Department has indicated urban runoff and pollutants at this location would not endanger plants and animals that reside in the marsh, including the endangered clapper rails. Therefore, the Commission finds that the City's decision to approve the proposed development does not raise a substantial issue with regards to conformance with the resource protection policies of the certified LCP cited above.



LEVY RESIDENCE

CDP 97-59

EXHIBIT NO. 1

APPLICATION NO.

A-6-CII-98-98

Location Maps



California Coastal Commission

California Coastal Commission

PARCEL "B"
ADJ PLAT 471
N.A.P.

