

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: To approve modifications to a coastal development permit

APPEAL NO.: A-6-PEN-05-117

APPLICANT: McMillian-NTC, LLC

PROJECT DESCRIPTION: Modifications to Buildings Nos. 27, 28, 29, 30, consisting of removing the narrow portion of the "I" shaped buildings and adding approximately 13,766 sq.ft. to the buildings, for the adaptive reuse of the buildings for retail and restaurant use. Building 208 will be preserved and restored to be used as an assembly space for special events.

PROJECT LOCATION: East of Truxton Road, between Womble Road and Roosevelt Road, Naval Training Center (Liberty Station), Peninsula, San Diego, San Diego County.

APPELLANTS: Save Our NTC, Inc.

SUMMARY OF STAFF RECOMMENDATION:

The subject appeal is unusual as it is an appeal of the City's decision to approve revisions to an approved Coastal Development Permit (CDP) No. 99-1076 through Substantial Conformance Review (SCR). Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. Based on review of the City's file and information provided by the appellants and applicant, staff has concluded that the development, as approved by the City, is consistent with all applicable LCP provisions regarding historic structures and land use. The development has been reviewed by the City's Historical Resources Board Design Review Subcommittee, consistent with the requirements of the certified LCP. The specific uses that will occur within the enlarged buildings in the Commercial District/Visitor-Community are required to be consistent with the retail and restaurant designation in the LCP. The Trader Joe's specialty market approved for Building 30 is

consistent with the policies of the LCP that specifically encourage retail support services at this location. No impacts to public access and recreation have been identified.

SUBSTANTIVE FILE DOCUMENTS: City of San Diego certified NTC Precise Plan and Local Coastal Program (LCP); San Diego CDP No. 99-1076, PTS No. 49417.

I. Appellant Contends That:

The appellant contends that the proposed development is inconsistent with the policies of the certified LCP which pertain to the preservation of historic structures, and the use of buildings within the Visitor and Community Emphasis Overlay area for major retail uses (a specialty grocery store).

II. Local Government Action.

The Substantial Conformance Review was approved by the Planning Commission on March 17, 2005, with no conditions.

III. Appeal Procedures/Substantial Issue Analysis.

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 or claims of exemption (such as a Substantial Conformance finding). Projects within cities and counties may be appealed if they are located within mapped appealable areas.

Section 30604(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 to a de novo hearing on the merits of the project. 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. If the Commission conducts a de novo 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.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the 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. In other words, in regard to questions about the impacts of a project on public access and recreation, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing such 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 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" (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 extend 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.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-PEN-05-117 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-PEN-05-117 does not present 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.

Findings and Declarations.

1. Project Description/Permit History. The Naval Training Center (NTC), now known as Liberty Station, is a 361-acre former military training center located between Rosecrans Street and the San Diego Boat Channel, within the Peninsula Community of the City of San Diego. In September 2001, the Commission certified an NTC Precise Plan and Local Coastal Program (LCP) covering the 361 acres of NTC that was conveyed from the federal government to the city, including the subject site.

On November 19, 2001, the City of San Diego approved appealable Coastal Development Permit (CDP) No. 99-1076 for renovations within the Naval Training Center (NTC) Historic District. The approved NTC project consisted of the following development:

- a. Demolition of existing structures;

- b. Subdivision of the property into ten parcels with each parcel containing several lots, and grading activities;
- c. Construction of 350 new single-family and multi-family residential dwelling units;
- d. Construction of seven buildings comprising approximately 380,000 sq.ft. of new commercial office space;
- e. Rehabilitation of existing buildings within the Mixed Use (including Historic District) and Educational Areas to allow new uses as defined by the NTC Precise Plan/LCP and the implementing CR-1-1 zone;
- f. Landscaping
- g. Off-street parking facilities;
- h. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted NTC Precise Plan and Local Coastal Program.

The City permit contained numerous conditions on the development, including the following Process Conditions:

- a. NTC Historic District: All currently proposed and future work within the NTC Historic District, shall be consistent with the Naval Training Center San Diego Guidelines for the Treatment of Historic Properties and the U.S. Secretary of the Interior's Standards and Criteria for the Treatment of Historic Properties. All future improvement plans not currently proposed, for new buildings or additions to buildings within the Historic District shall be sent to the California State Historic Preservation Office (SHPO) for a determination of consistency with the U.S. Secretary of the Interior's Standards and Criteria and shall be reviewed by the City of San Diego Historical Resources Board for a recommendation before final approval by the decision making body of the required permit.
- b. Any new development not expressly approved by this permit shall require an amendment to this permit. Any modifications to existing structures on the site, not directly approved by this permit, shall require a Substantial Conformity Review by Development Services to determine Substantial Conformity with Exhibit "A," dated November 19, 2001, on file in Development Services, or an amendment to this permit shall be required.

The City's coastal development permit was not appealed to the Coastal Commission.

The City of San Diego Development Services staff have indicated that typically, large projects such as the NTC redevelopment project continue to be refined and adjusted after the initial approval from the City. These refinements are reviewed by the City through the Substantial Conformance Review (SCR) Process referenced in the above condition.

The certified City of San Diego LCP includes procedures for processing an SCR. The Land Development Code Section 126.0112 states:

A proposed minor modification to an approved development permit may be submitted to the City Manager to determine if the revision is in substantial conformance with the approved permit. If the revision is determined to be in substantial conformance with the approved permit, the revision shall not require an amendment to the development permit. Within the Coastal Overlay Zone, any substantial conformance determination shall be reached through a Process Two review.

Process Two decisions occur at the staff level, with appeal rights to the Planning Commission. The City cannot impose additional permit conditions through the SCR process. If the proposed modifications are not in substantial conformance, or if additional permit conditions are necessary, an amendment to the original permit is required and the SCR cannot be supported.

On January 28, 2005, Development Services staff approved an application request for an SCR for modifications to CDP No. 99-1076 relating to Buildings Nos. 27, 28, 29, 30, 158, 159, 207, 208, and 366 for the NTC Marketplace (PTS No. 49417). The Marketplace at Liberty Station authorized in CDP No. 99-1076 consists of a cluster of five major buildings (27, 28, 29, 30, and 208) and four minor structures (158, 159, 207, and 366) located in the middle of NTC, East of Truxton Road, between Womble Road and Roosevelt Road, in the Commercial and Education districts. All nine buildings are listed as contributing structures to the NTC Historic District. The five major buildings as originally approved contained a total of approximately 146,436 sq.ft. of gross floor area. The approved SCR revisions involve removing the narrow portion of each of the three existing "I" shaped buildings (Nos. 27, 28, and 29) and adding a total approximately 13,766 sq.ft. to the buildings. The additions will allow for the adaptive reuse of the buildings for retail and restaurant use. Buildings 158, 159, and 207 will be relocated adjacent to Buildings 27 and 29. (See Exhibit #3)

The City staff's SCR decision was appealed to the Planning Commission by the subject appellant, Save Our NTC. On March 17, 2005, the Planning Commission approved the City staff's decision and adopted SCR findings for the NTC Marketplace. The day after the City's approval of the SCR, John McNab, a representative from Save Our NTC contacted Coastal Commission staff regarding an appeal of the Planning Commission decision. Based on the available information at that time, Commission staff advised him that Commission procedures did not allow for an appeal of an SCR decision.

In October 2005, John McNab informed the Commission at the public comment period of the Coastal Commission hearing of some concerns he has about the development approved for the NTC Marketplace, and submitted a comment letter (see Exhibit #5). Commission staff responded by requesting additional information from the City regarding the processing of the NTC Marketplace development. A copy of this letter was forwarded to Mr. McNab. Commission staff's letter and the City's response are attached as Exhibit #6).

On October 28, 2005, Save Our NTC submitted an appeal of the City's SCR decision for the NTC Marketplace. For the great majority of coastal development permits issued by the City, the SCR involves only minor adjustments and refinements to the approved development. The subject project is unusual in the scope of the revisions approved under the SCR process. Nevertheless, the SCR decision is an appealable action on a "coastal development permit or claim of exemption" pursuant to Public Resources Code section 30625. However, Section 121.0102 of the City's certified LCP Land Development Code states the following:

Any action or proceeding to challenge, review, or void any decision made in accordance with the Land Development Code shall commence no later than 90 calendar days after the date on which the decision becomes final. Thereafter; all persons are barred from taking any such action or invoking any defense of invalidity or unreasonableness of the decision.

Since the appeal was submitted more than seven months after the City's final decision on the SCR, the appeal does not comply with this deadline. However, the appellant's representative made an inquiry to Commission staff well within this deadline and was told that they could not appeal the SCR decision. Since the appellant's failure to meet the deadline is a result of receiving mistaken information from Commission staff, it would not be equitable for the Commission to enforce this deadline. In any case, even if the appeal is considered timely, as discussed below, the proposed development raises no substantial issue regarding conformance with the certified LCP and the public access and recreation policies of the Coastal Act.

The subject site is in the Peninsula community of the City of San Diego between the first public road (Rosecrans Street) and the sea. As such, the standard of review is the certified LCP and the public access and recreation policies of the Coastal Act.

2. Preservation of Historic Structures. The appellants contend that the proposed revisions to the "I" shaped buildings 27, 28, and 29 constitute the destruction of these historic buildings. These three buildings are located within the commercial precinct of the Mixed Use Area. A Visitor and Community Emphasis Overlay (VCEO) and Historic District overlay the site, and the buildings are adjacent to a corridor with a Public Promenade Overlay. Section II: Land Use –16 of the NTC Precise Plan/LCP states:

Demolition and new construction is anticipated particularly in regard to the creation of new parking opportunities within the Historic District and in eliminating buildings outside the District. Future demolition and/or new construction is allowed within the Mixed Use Area so long as it abides by regulations of the City of San Diego, and should it fall within the Historic District, is subject to review by the Historical Resources Board.

Section II: Land Use –17 states:

Relocation or demolition of structures contributing to the Historic District, or construction of new buildings within the Historic District, can only occur through the formal process established by the City of San Diego.

Generally, the modifications to Buildings 27, 28, 29 consists of the addition of new floor area on the sides of the building between the original building wings, but preservation and restoration of the primary building façades that face the promenade, Womble Road, Truxtun Road, and Roosevelt Road. The new building façades in the secondary spaces would be compatible but differentiated from the original historic façades. The new parapet height would be lower than and subservient to the historic parapets. The pedestrian arcades would be maintained and restored to their historic condition and would be used as the primary pedestrian access for the project. Removal of the narrow portion of these buildings will not affect the building facades that face the promenade. For Building 30, the secondary façade and the center section on the south elevation would be slightly modified to improve service access to the buildings, and the original service entrances would be enlarge to the meet the current standards for truck access.

The City performed a detailed analysis of the proposed alterations' potential impact to the historic structures or district, including how the development conforms to the Secretary of the Interior's Standards for Rehabilitation, and to the *NTC Guidelines for the Treatment of Historic Properties* (see Exhibit #7). In addition, the changes to the buildings were reviewed and approved by the Historical Resources Board Design Assistance Subcommittee (DAS) and some changes to the proposed modifications were made based on DAS input.

The LCP anticipated that new construction and/or demolition of some historic structures could be necessary to redevelop NTC consistent with the certified Precise Plan. Rather than define specific elements of historic structures that must be preserved, the LCP requires that new development at NTC abide by specific procedures to ensure that historic resources are preserved. While the appellant disagrees with the conclusion of the City and the DAS, the formal review process followed by the City is consistent with the above-cited LCP policies regarding new construction in the Historic District. The applicant has not submitted any evidence that the City did not accurately or fully represent the project to the DAS.

In summary, while the SCR approved some fairly substantial changes to the historical structures at the NTC Marketplace site, these changes have been reviewed by the appropriate agencies and been found to be consistent with City and federal standards. The review process undertaken through the SCR is consistent with the LCP requirements for the preservation of historic structures. Thus, the Commission finds that there is no substantial issue with respect to this ground on which the appeal was filed.

3. Land Uses at NTC Marketplace. The appellants content that the City's proposed reuse of the historic buildings for the NTC Marketplace is inconsistent with the LCP

policies for the Visitor and Community Emphasis Overlay (VCEO). Buildings 27, 28, 29 and 208 are located within Zone B of the VCEO, in the Commercial District, in the Mixed Use Area. Section II: Land Use – 16 of the LCP states:

Priority Uses within the Mixed Use Area are virtually any office commercial, educational, recreational, or light-industrial use that can tolerate high aircraft noise levels and function in a structure which, due to its age and historic designation, may be improved following the *Naval Training Center Guidelines for the Treatment of Historic Properties*. Desirable uses are office and administration, commercial, for-profit and non-profit institutional, low/no environmental impact research and development, museum, arts and cultural activities, live/work units, restaurants, marine-related uses, and public use areas.

Section II: Land Use – 17 of the LCP states:

Most of the Mixed Use area lies within a Visitor and Community Emphasis Overlay (VCEO) area. The intent of the VCEO is to ensure that adequate area is provided for uses that are visitor-serving and/or community-oriented in nature... The VCEO area is subject to restrictions, identified in Appendix B, designed to ensure that development in this area will be visitor-serving and community-oriented in nature. Residential, industrial, and research and development type uses are excluded from this area.

Section II: Land Use – 25 of the LCP states:

Uses within the commercial precinct include all those eligible for the CACP [The Civic, Arts, and Culture Precinct allows uses such as non-profit offices, restaurants, museums, and retail activities associated with primary uses, classrooms, and artist spaces] plus for-profit office uses, retail establishments, restaurants, recreational uses and activities, light industrial uses, and special education uses.

The specific uses proposed for Buildings 27, 28 and 29 have not yet been determined. However, the coastal development permit approved for NTC requires that uses within these buildings be limited to those uses specifically identified in Zone B of VCEO, and nothing in the approved SCR changes that.

Building 30 is located in the Educational Subdistrict. Section II: Land Use – 9 of the LCP states:

Priority Uses within the educational area are educational and vocational training, including but not limited to traditional and non-traditional classroom instruction, corporate training, public and charter public schools, private for-profit and not-for-profit institutions, and incubator businesses.

Other Uses include retail support services such as educational supplies and services (e.g. bookstores, art stores, computer stores, copying facilities), eating

establishments (e.g., cafeterias or student union type facilities), and transient occupancy facilities comparable to European pensions. These uses are allowed as support uses to the educational facilities, not as primary uses. [...]

Section II: Land Use – 10 of the LCP states:

Navy Building 30 is an architecturally significant structure and is included in the Historic District. Its rehabilitation and reuse must be consistent with the “NTC Guidelines for the Treatment of Historic Properties.” The side of Building 30 that borders the Mixed Use Area should relate directly to the pedestrian-oriented mixed-use character of that area. Therefore, portions of Building 30 adjacent to the promenade may be ideally suited for uses that have a retail nature, e.g. a bookstore, or restaurant. [...]

The use proposed for Building 30 and authorized through the SCR process is a specialty grocery store, specifically, a Trader Joe’s. The City of San Diego has indicated that the proposed Trader Joe’s represents only about 3.4% of the entire educational use area, the majority of which is occupied by High Tech High Explorer Elementary, and the Rock Church and School. While a grocery store is not a priority use within the Educational Subdistrict, the proposed store would make up a very small percentage of the uses in the Subdistrict, consistent with the “retail support services” expected to occur in the area. The specific policies in the LCP for Building 30 support the development of retail uses as proposed. Thus, the approved retail use is consistent with the certified LCP policies regarding land use.

In summary, the Commission finds that the uses proposed at the NTC Marketplace are consistent with uses anticipated and required by the certified LCP for the Mixed Use Area, Commercial District, VCEO, and the Educational Subdistrict. No adverse land use impacts are anticipated. Therefore, the Commission finds that there is no substantial issue with respect to this ground on which the appeal was filed.

6. Conclusion. In summary, the development as approved by the City, is consistent with all applicable LCP land use policies and provisions/development standards of the certified LCP Implementation Plan. The project, as approved by the City, will not adversely impact historic structures or land use. No impacts to public access and recreation have been identified. Therefore, the Commission finds there is no substantial issue with regard to the project’s consistency with the certified LCP or the public access and recreation polices of the Coastal Act.

7. Substantial Issue Factors. As discussed above, there is strong 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 no substantial issue. The proposed project is in line with the type of development envisioned and required in the certified LCP. The objections to the project

suggested by the appellants do not raise any substantial issues of regional or statewide significance.

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