

CALIFORNIA COASTAL COMMISSION

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Filed: 2/27/06
49th Day: 4/17/06
180th Day: 8/26/06
Staff: Lillian Ford
Staff Report: 3/30/06
Hearing Date: 4/13/06



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STAFF REPORT: APPEAL **SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Carpinteria

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-CPN-06-020

APPLICANT: Venoco, Inc.

APPELLANT: Commissioners Caldwell and Kruer; Susan Allen

PROJECT LOCATION: Terminus of Dump Road, east of Tar Pits Park and north of the Pacific Ocean in the City of Carpinteria, Santa Barbara County.

PROJECT DESCRIPTION: Construction of a 48 inch high split rail and chain link fence with locking gate to enclose an approximately 2.4-acre existing bluff top parking lot and installation of a four-foot wide landscape planter containing native coastal sage scrub plants immediately outside of and parallel to portions of the fence. The approved project also includes a sign program that maintains ten existing signs, adds one new sign, and removes eleven signs. The signs pertain to public access at the site.

SUBSTANTIVE FILE DOCUMENTS: City of Carpinteria Local Coastal Program; City of Carpinteria Final Development Plan 05-1202-DP/CDP (City Council Approval dated February 13, 2006).

SUMMARY OF STAFF RECOMMENDATION **SUBSTANTIAL ISSUE EXISTS**

Staff recommends that the Commission determine that **substantial issue** exists with respect to the grounds on which the appeal has been filed. The **motion** and **resolution** for substantial issue are found on **pages 3 - 4**.

I. APPEAL JURISDICTION

The project site is an approximately 8.4 acre parcel located at the terminus of Dump Road, immediately east of Tar Pits Park and north of the Pacific Ocean in the City of Carpinteria, Santa Barbara County. The Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map certified for the City of Carpinteria (adopted November 17, 1983) indicates that the appeal jurisdiction for this area extends from the sea to Carpinteria Avenue. In addition, Section 30603 of the Coastal Act states, in part, that an action taken by a local government on a coastal development permit application may be appealed to the commission if the development approved is located between the first public road (which in this case is Carpinteria Avenue) and the sea. The entire subject parcel is located between the sea and Carpinteria Avenue. As such, all portions of the development are located within the appeal jurisdiction of the Commission and accordingly, the City's action to approve the permit is appealable.

A. Appeal Procedures

The Coastal Act provides that after certification of Local Coastal Programs, a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of 10 working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

Appeal Areas

Under Section 30603 of the Coastal Act, development approved by a local government may be appealed to the Commission if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of any wetland, estuary, or stream. Further, any development approved by a local County government that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission, irrespective of its geographic location within the coastal zone. Finally, development that constitutes major public works or major energy facilities may also be appealed to the Commission.

Grounds for Appeal

The grounds for appeal of development approved by the local government and subject to appeal to the Commission 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 Division 20 of the Public Resources Code (Section 30603[a][4] of the Coastal Act).

Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with

respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. 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 its representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

De Novo Review Hearing

If a substantial issue is found to exist, the Commission will consider the City's action de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing, or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. Local Government Action and Filing of Appeal

Commission staff received a Notice of Final Action for a Coastal Development Permit (Case No. 05-1202-DP/CDP) issued by the City for the construction of the new fence and sign program on February 22, 2006. Following receipt of the Notice of Final Action, a 10 working day appeal period was set and notice provided beginning February 23, 2006 and extending to March 8, 2006.

An appeal of the City's action was filed by Susan Allen, during the appeal period, on February 27, 2006. An appeal was subsequently filed by Commissioners Caldwell and Kruer, during the appeal period, on March 8, 2006. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal forms.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-CPN-06-020 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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 Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-CPN-06-020 raises **a substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Description

The action undertaken by the City in CDP No. 05-1202-DP/CDP, and subject to appeal, is the City's approval of a development permit and coastal development permit for construction of a 48 inch high split rail and chain link fence with locking gate to enclose an approximately 2.4-acre existing bluff top parking lot and installation of a four-foot wide landscape planter containing native coastal sage scrub plants immediately outside of and parallel to portions of the fence. The approved project also includes a sign program that maintains ten existing signs, adds one new sign, and removes eleven signs. Exhibit 5 includes photos of the signs, including the ones that were approved to be retained and those that would be removed. The majority of the signs relate to parking restrictions. The project is located at the terminus of Dump Road, east of Tar Pits Park and north of the Pacific Ocean in the City of Carpinteria, Santa Barbara County.

Project plans are attached to this report as **Exhibit 5**.

B. Background

The subject parcel is an approximately 8.4 acre bluff top lot located at the terminus of Dump Road, on Venoco property just south of the Venoco Oil and Gas Company Processing Facility. The parcel is located north of the Pacific Ocean and east of Tar Pits Park, a City park that provides bluff and beach access. The parcel is located west of a privately owned open space area that includes a popular overlook for a large harbor seal rookery. The approved fence encloses an approximately 2.4 acre area that is located in the southwest portion of the parcel, immediately north of the coastal bluff face and east of Tar Pits Park.

The majority of the area enclosed by the approved fence consists of an existing parking lot; however, the western line of the approved fence is located on a slope below the parking area. This slope contained coastal bluff scrub vegetation prior to the recent recapping of a defunct burn dump that exists below the site. The slope will be revegetated with native coastal bluff scrub vegetation upon completion of the recapping project. As discussed further in Section E. below, the slope and the surrounding approximately 2.75 acre far western portion of the subject parcel is undeveloped with the exception of trails and is visually indistinct from (and easily assumed to be a part of) the neighboring Tar Pits Park. Prior to recapping of the burn dump, a footpath traversed the slope adjacent to the bluff edge and served as an informal access way from trails within this far western portion of the property into the parking lot area. This footpath has been in existence since at least 1972 (**Exhibit 6**).

The parcel is designated Coastal Dependent Industrial (CDI) in the City's certified Land Use Plan (LUP), with the exception of the approximately 2.75-acre portion of the site west of Dump Road, which is designated Open Space and Recreation (OSR). The entire parcel is zoned M-CD (Coastal Dependent Industry). In its certification of the City's recently updated LUP, the Commission stated that portions of the LUP, including the Land Use Plan map, shall not become effective until the Commission certifies amendments to the City's Implementation Program that are adequate to carry out those portions of the LUP. Therefore, the effective LUP designation for the site is the designation provided in the previous LUP. In the previous LUP, the parcel is designated Coastal Dependent Industry, with the exception of the approximately 2.75-acre portion of the site west of Dump Road, which is designated Existing Public or Private Recreation and/or Open Space (P/OS). The site is also subject to the Environmentally Sensitive Habitat Area (ESH) Overlay District,

Site History

Prior to 1983, the subject site was part of a 16.70-acre privately-owned parcel known as the "Murvale/Exxon Property." The property, which was bordered on the west by the Carpinteria State Beach, was undeveloped and contained numerous unimproved trails. In 1983, the Exxon Corporation dedicated in fee title the western 8.81 acres of the 16.70 acre property as a negotiated condition of approval for a pipeline project. The dedicated property is now Tar Pits Park.

Although the subject property was retained by Exxon, and is now owned by Venoco, it has also been historically used for public access to and along the bluffs. Aerial photographs show footpaths leading from what is today Tar Pits Park into the subject parking lot area. The originally certified City LUP (certified in January 1980) designates the subject property west of the parking lot as Existing Public or Private Recreation and/or Open Space (P/OS) and notes the following areas of "historic public use" on and in the vicinity of the subject site:

Areas of Historic Public Use

Strong evidence of a right of public access to the beach and for informal recreation through use, custom, or legislative authorization has been established for the following areas:

....

- 7. The existing footpaths on Carpinteria bluffs: that which parallels the northern right of way of the railroad, running east/west, from Area III of the bluffs through Area I across the railroad, through the Chevron parking lot, and those on APN 1-170-11 connecting with the State Beach Park;***

In addition, the City's Coastal Recreation and Access Implementation Program, dated September 1981, designates the entire 16.70 Murvale/Exxon property as a "Proposed Public Recreation Area/Park" and proposes a paved bike path through the subject parking lot.

C. City Approval

In January 2005, Venoco Inc. submitted a proposal to the City of Carpinteria to build a six foot (72 inch) high chain link fence on the subject site. Prior to the first meeting of the City's

Architectural Review Board (ARB), Venoco reduced the height of the fence to five feet (60 inches). On July 14, 2005, the ARB recommended that the fence be lowered to four feet (48 inches) and constructed of wooden split rail backed by dark vinyl chain link, and on September 15, 2005 recommended approval of the project with conditions following submittal of a revised project description incorporating these changes. The ARB also recommended approval of the proposed sign program that permits ten of the existing 21 signs and removal of the remainder. On January 3, 2006, the City of Planning Commission approved the project with conditions, including reduction of the fence height from 48 inches to 42 inches. On January 13, 2006, during the appeal period for the Planning Commission's action, Venoco submitted an appeal of the Planning Commission's action on the fence height, on grounds that the 48 inch high fence was necessary to serve as a deterrent to trespassers. The City Council approved the project with a 48 inch high fence on February 13, 2006. A Notice of Exemption [Categorical Exemption, Section 15303(e)] was also prepared on February 13, 2006. The City Council resolution and conditions of approval are attached as **Exhibit 3**.

D. Appellants' Contentions

The City's action was appealed to the Commission by (1) Commissioners Caldwell and Kruer; and (2) Susan Allen.

The appeal filed by Commissioners Caldwell and Kruer is attached as **Exhibit 1**. The appeal contends that the approved project raises issues in regards to consistency with the public access, visual resources, and sensitive resources protection policies of the certified LUP, and the public access policies of the Coastal Act. Specifically, the Commissioners' appeal argues that the approved project raises issues of consistency with LUP Policies LU-1, OSC-14a, OSC-14k, and OSC-4, IP 20 which require increased public access and recreational opportunities, including for the disabled and elderly; prohibit development that diminishes or interferes with public access established by use, including the continuation of historic public parking and access; and require adequate parking to maximize public access to coastal recreation areas, including Tar Pits Park, Harbor Seal Overlook, and the Carpinteria Bluffs. The appeal also contends that the approved project is not consistent with the public access policies of the Coastal Act, which are incorporated into the City's LUP by Policy LU-1a. In addition, the appeal alleges that the approved project is inconsistent with LUP Policies for the protection of ocean views and visual resources, including Policies CD-12, CD-12 IP 1, CDS6-2, CDS6-b, CDS6 IP 59, CDS6 IP 64, CDS6 IP83, OSC-2h, OSC-13, and OSC-13a. These policies require existing views and the visual quality of bluffs to be preserved and new development to fit quietly into the existing natural landscape without obstructing views of the ocean or bluff edge. The policies also require height restrictions for view preservation, and bluff-edge setbacks for protection of views from public beaches. The appeal contends that the approved height and design of the proposed fence do not minimize its obtrusiveness or allow it to blend into its surroundings to the maximum extent feasible. Lastly, the appeal argues that the approved project is inconsistent with LUP policies for the protection of native plant communities, including Policies OSC-2c, OSC-2d, and OSC-7, and potentially with the ESHA protection policies of the LUP, as the western portion of the approved fence is located within an area of coastal bluff scrub habitat that is undergoing restoration, and the southern portion of the approved fence is located immediately adjacent to coastal bluff scrub habitat on the bluff face.

The appeal filed by Susan Allen is attached as **Exhibit 2**. The appeal contends that the approved project is inconsistent with LUP Policy OSC-14a, which requires increased public

access, including for the disabled and elderly, and Policy OSC-14k, which prohibits new development from interfering with or diminishing public access. Ms. Allen also contends that the approved project is inconsistent with LUP Policy CDS-6 which requires protection of ocean views.

E. Analysis of Substantial Issue

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants.

Section 30603 provides:

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. (Section 30603(b)(1)).

Section 30625 (b) provides:

The commission shall hear an appeal unless it determines the following:

....

(2) 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. (Section 30625(b)(2)).

Therefore, the grounds for an appeal of the CDP are limited to an allegation that the development approved under CDP No. 05-1202-DP/CDP does not conform to the City of Carpinteria's certified LCP or public access policies of the Coastal Act. On August 6, 2002 the Commission approved an amendment for an updated Land Use Plan for the City of Carpinteria LCP. The amendment was adopted by resolution of the City of Carpinteria City Council on January 27, 2003, and received final certification from the Commission on April 10, 2003. Although many of the LUP policies became effective upon certification, many others will only become effective once necessary amendments are made to the City's Implementation Program (IP). These policies are listed in Appendix J of the updated LUP. Thus, the LUP consists of policies that were certified on January 22, 1980 along with many, but not all of the amendments that were certified in 2002. The certified LIP remains in place. Thus, the standard of review for this appeal includes the certified LUP and LIP, as well as the public access policies of the Coastal Act.

The submitted appeals allege that the approved development does not comply with the public access, visual resource, and sensitive resource protection policies of the City of Carpinteria LCP, and the public access policies of the Coastal Act. The Commission finds that a substantial issue does exist with respect to the grounds on which the appeal has been filed for the specific reasons discussed below.

Public Access

The appellants contend that the approved project does not conform to the following policies of the City of Carpinteria LCP:

Policy LU-1, which states:

Establish the basis for orderly, well planned urban development while protecting coastal resources and providing for greater access and recreational opportunities for the public.

Policy LU-1a, which states:

The policies of the Coastal Act (Public Resources Code Section 30210 through 30263) are hereby incorporated by reference (and shall be effective as if included in full herein) as the guiding policies of the land use plan.

Policy OSC-4, IP 20, which states:

Provide adequate parking to maximize public access to coastal recreation areas, including Salt Marsh Nature Park, City Beach, Carpinteria State Park, Tar Pits Park, Harbor Seal Overlook, and the Carpinteria Bluffs. Consider using revenues from the Tidelands Trust Fund to finance such improvements. Parking facilities shall be distributed, as feasible, to prevent overcrowding and to protect sensitive environmental resources.

Policy OSC-14a, which states:

Increase coastal and recreational access for all segments of the population, including the disabled and elderly, while protecting natural resources, particularly environmentally sensitive habitat areas.

Policy OSC-14k, which states:

In those areas where it is established that the public acquired a right of access through use, custom or legislative authorization, new development shall not interfere with or diminish such access. This policy shall be interpreted to allow flexibility in accommodating both new development and continuation of historic public parking and access.

Section 30210 of the Coastal Act, which is incorporated by reference in Policy LUP-1a and states:

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.

Coastal Act Section 30211 which is incorporated by reference in Policy LUP-1a and states:

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.

The subject parcel is an approximately 8.4 acre bluff top lot located at the terminus of Dump Road, on Venoco property just south of the Venoco Oil and Gas Company Processing Facility. The parcel is located north of the Pacific Ocean and east of Tar Pits Park, a City park that provides bluff and beach access. The parcel is located west of a privately owned open space area that includes a popular overlook for a large harbor seal rookery. The approved project includes construction of a 48 inch high split rail and chain link fence enclosing an approximately 2.4 acre area that is located in the southwest portion of the parcel, immediately north of the coastal bluff face and west of Tar Pits Park. The approved project also includes a sign program that maintains ten existing signs, adds one new sign, and removes eleven signs pertaining to public access at the site.

The majority of the area enclosed by the approved fence consists of an existing parking lot; however, the western line of the approved fence is located on a slope below the parking area. The slope and the surrounding approximately 2.75-acre far western portion of the subject parcel is undeveloped with the exception of trails and, until recently, park benches, and is visually indistinct from the neighboring Tar Pits Park. Prior to the recent recapping of a burn dump that underlies the site, a footpath traversed the slope adjacent to the bluff edge and served as an informal access way from trails within this far western portion of the property into the parking lot area. This footpath has been in existence since at least 1972 (**Exhibit 6**).

Prior to 1983, the subject site was part of a 16.70-acre privately-owned parcel known as the "Murvale/Exxon Property." The property, which was bordered on the west by the Carpinteria State Beach, was undeveloped and contained numerous unimproved trails. In 1983, the Exxon Corporation dedicated in fee title the western 8.81 acres of the 16.70 acre property as a negotiated condition of approval for a pipeline project. The dedicated property is now Tar Pits Park.

Although the subject property was retained by Exxon, and is now owned by Venoco, it has also been historically used for public access to and along the bluffs. The originally certified City LUP (certified in January 1980) designates the subject property west of the parking lot as Existing Public or Private Recreation and/or Open Space (P/OS) and notes the following areas of "historic public use" on and in the vicinity of the subject site:

Areas of Historic Public Use

Strong evidence of a right of public access to the beach and for informal recreation through use, custom, or legislative authorization has been established for the following areas:

....

- 7. The existing footpaths on Carpinteria bluffs: that which parallels the northern right of way of the railroad, running east/west, from Area III of the bluffs through Area I across the railroad, through the Chevron parking lot, and those on APN 1-170-11 connecting with the State Beach Park;***

In addition, the City's Coastal Recreation and Access Implementation Program, dated September 1981, designates the entire 16.70 Murvale/Exxon property as a "Proposed Public

Recreation Area/Park” and proposes a paved bike path through the subject parking lot. Based on available information, including aerial photographs and the Carpinteria LCP, there is substantial evidence that there has been historic public use of the site as a scenic pedestrian access way between Tar Pits Park, the Harbor Seal Haul Out, and other bluffs areas east of the site.

Evidence of historic use of the subject area as a public parking lot is less readily available and mainly anecdotal. Although aerial photographs from 1972 to present show a number of private vehicles parked in the uncontrolled lot, it is not possible to determine whether the vehicles were those of employees or the general public. Appellant Susan Allen, who is a representative of Seal Watch, a volunteer conservation organization that monitors the nearby harbor seal haulout area, states that elderly members of the organization park their vehicles in the lot in order to enjoy ocean views and glimpses of the seals. Ms. Allen also states that Seal Watch members use the parking lot to observe and call down to beach walkers who may be approaching the boundaries of the seal sanctuary. The Commission notes that no public parking exists for the adjacent Tar Pits Park, and that the nearest public parking is located approximately one mile west of the site at the Carpinteria State Beach parking lot, or 0.75 mile southeast of the site, and across the railroad tracks, at the Carpinteria Bluffs Park parking lot. Given the above information, it is reasonable to assume some historic and current use of the site for public parking.

As noted above, Coastal Act Policy 30210 requires maximum public access. In addition, LUP Policies LU-1, OSC-14a, and OSC-14k prohibit new development from diminishing or interfering with existing public access, acquired through use, and require increase access opportunities, including for the elderly and disabled. LUP Policy OSC-4, IP 20 specifically highlights the need for public parking in the subject area.

The approved fence would prohibit public access to a bluff top area that has been used by the public as an access way along the bluff and leading both to a scenic overlook area as well as to the beach upcoast of the site for at least 34 years. Although there is a mapped trail along the northern edge of the project site that will not be affected by the approved project, there is evidence of historic public use of the parking lot area as an access way that would be blocked by the approved fence. The City’s action does not address the impact of the project on historic public use of the site. The approved fence also raises the issue of continued use of historic public parking, which is protected by LUP Policy OSC-14k, in an area that is specifically denoted in LUP Policy OSC-4, IP 20 as in need of additional public parking. In addition, the approved fence encloses the City’s only bluff-top coastal access point for motorized vehicles, and thus raises issues regarding increased public access for the disabled and elderly, as called for in LUP Policy OSC-14a.

In summary, for all of the reasons stated above, the appeal does raise a substantial issue regarding conformance with LUP Policies LU-1, LU-1a, OSC-4, IP 20, OSC-14a, and OSC-14k, and the public access policies of the Coastal Act.

Visual Resources

The appellants assert that the approved does not conform to the following policies of the City of Carpinteria LCP:

LCP Policy CD-12, which states:

Development should fit quietly into the area's natural and introduced landscape, deferring to open spaces, existing natural features and native and sensitive habitats.

LCP Policy CD-12, IP 1, which states:

Use of native, locally adapted species shall be encouraged and shall be required within and adjacent to ESHA.

LCP Policy CDS6-2, which states:

Ensure that development is controlled to avoid impacts to significant viewsheds, vistas, and view corridors.

LCP Policy CDS6-b, which states:

Development on the Bluffs shall not obstruct existing view corridors of the ocean and bluff top edge. In addition, views of the ocean and mountains for users of the Carpinteria Bluffs Nature Park and coastal trail(s), for bluffs area property owners and visitors, and for passing motorists, shall be maintained.

LCP Policy CDS6, IP 59, which states:

Development that is located on or adjacent to bluffs, beaches, or streams shall be designed and sited to prevent adverse impacts on the visual quality of these resources.

- ***The overall scale and massing of structures shall respect the natural setting of the Carpinteria Bluffs and its unique visual resources by incorporating designs that minimize bulk and mass, follow natural topographic variations, and minimize visual intrusion into the bluff edge park and bluff top trail, riparian area within Area II, and adjacent beach areas.***
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- ***All ancillary structures, including parking lots or structures, shall be located as close to the center of the individual building area as possible. If such structures must be located adjacent to open space or residential areas, landscaping that substantially screens the structure from the surrounding uses shall be required.***
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- ***To ensure that the view corridors are appropriately framed and maintained, all structures shall be subjected to review by the City's Architectural Review Board, which will ensure that selected building sites adjacent to the open space areas and view corridors have included provision for depressed building sites, berming and/or suitable landscaping.***

- *Berms, landscaped buffers and islands shall be created wherever feasible and determined necessary to enhance open space and visual appeal in association with roadways, parking lots and building sites.*
- *New development is to remain visually subordinate to surrounding natural and introduced landscaping. New buildings, signs, roads, and other man-made features should borrow from naturally established forms, lines, colors, and textures, including the forms, lines, colors, and textures introduced as part of site landscaping. New buildings, signs, roads, and other man-made features should also be at such a scale that they contribute to the desired low intensity character for the Carpinteria Bluffs.*
- *Permitted development within identified view corridors shall be limited to landscaping, roads, underground utilities, parking lots (where specifically required by other provisions of the Carpinteria Local Coastal Plan or Carpinteria Bluffs Local Coastal Plan Amendment), walkways, bikeways, public restrooms (where specifically required by other provisions of the Carpinteria Bluffs Coastal Access, Recreation, and Open Space Master Program), bike racks, benches, picnic tables, and small interpretive signs.*
- *The intrusiveness of wall surfaces facing toward the bluff edge, the Bluffs Nature Park, riparian area, or identified view corridors shall be minimized through the use of single story elements, setbacks, roof pitches, and landscaping.*

LCP Policy CDS6, IP 64, which states:

Parking lots adjacent to and visible from public rights-of-way, the Bluffs Nature Park, and bluffs area trails should be screened from view through combinations of earth berms, low screenwalls, changes in elevation, and landscaping.

LCP Policy CDS6, IP 83, which states:

Development within the Carpinteria Bluffs should fit quietly into the area's natural and introduced landscape, deferring to open spaces, existing natural features, and native and sensitive habitats.

LCP Policy OSC-2h, which states:

Preserve public enjoyment of Carpinteria Bluff view sheds by ensuring that they are not significantly degraded through development. All development applications shall be required to provide information adequate to identify existing and future public views and to demonstrate how the project proposes to avoid significant disruption of the view sheds identified. The location, size and density of development on the Bluffs shall be determined in part by the view sheds identified and what is necessary to protect them.

LCP Policy OSC-13, which states:

Preserve Carpinteria's visual resources.

LCP Policy OSC-13a, which states:

Preserve broad, unobstructed views from the nearest public street to the ocean, including but not limited to Linden Avenue, Bailard Avenue, Carpinteria Avenue, and U.S. Highway 101. In addition, design and site new development on or adjacent to bluffs, beaches, streams, or the Salt Marsh to prevent adverse impacts on these visual resources. New development shall be subject to all of the following measures:

- a. Height and siting restrictions to avoid obstruction of existing views of visual resources from the nearest public areas.***
- b. In addition to the bluff setback required for safety, additional bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures shall be set back from the bluff edge sufficiently far to ensure that the structure does not infringe on views from the beach except in areas where existing structures already impact public views from the beach. In such cases, the new structure shall not be greater in height than adjacent structures and shall not encroach seaward beyond a plane created by extending a straight line ("stringline") between the nearest building corners of the existing buildings on either side of the proposed development. Patios, balconies, porches and similar appurtenances, shall not encroach beyond a plane created by extending a straight line between the nearest corners closest to the beach from the existing balconies, porches or similar appurtenances on either side of the proposed development. If the stringline is grossly inconsistent with the established line of seaward encroachment, the Planning Commission or City Council may act to establish an encroachment limit that is consistent with the dominant encroachment line while still limiting seaward encroachment as much as possible.***
- c. Special landscaping requirements to mitigate visual impacts.***

The subject parcel is an approximately 8.4 acre bluff top lot located at the terminus of Dump Road, within Bluffs Area "0" as designated by the City's LUP. The parcel is located north of the Pacific Ocean and east of Tar Pits Park, a City park that provides bluff and beach access. The parcel is located west of a privately owned open space area that includes a popular overlook for a large harbor seal rookery. The approved project includes construction of a 48 inch high split rail and chain link fence enclosing an approximately 2.4 acre area that is located in the southwest portion of the parcel, immediately north of the coastal bluff face and west of Tar Pits Park. The approved project also includes a sign program that maintains ten existing signs, adds one new sign, and removes eleven signs pertaining to public access at the site.

The majority of the area enclosed by the approved fence consists of an existing parking lot; however, the western line of the approved fence is located on a slope below the parking area. The slope and the surrounding approximately 2.75-acre far western portion of the subject parcel is undeveloped with the exception of trails and, until recently, park benches, and is visually indistinct from the neighboring Tar Pits Park.

As noted above, Policy OSC-13a requires height and siting restrictions for development on or adjacent to bluffs, in order to avoid obstruction of existing views from the nearest public areas. Similarly, Policy CDS6-b prohibits development on the Carpinteria Bluffs (including Bluffs Area "0") from obstructing existing view corridors of the ocean and bluff top edge. In addition, Policies

CD-12 and CDS6, IP83 require development to fit quietly into the area's natural and introduced landscape, deferring to open spaces, existing natural features, and native and sensitive habitats. The appellants contend that the approved fence will be visible from Tar Pits Park and public tidelands, but does not minimize impacts to public views or blend into the surrounding landscape to the maximum extent feasible.

The approved four-foot high fence is constructed of split rail with dark vinyl chain link backing, and is fronted by a four-foot wide planter containing native landscaping. The proposed plantings are approximately three to four feet wide and three to five feet tall when fully grown. Although the plantings will soften the visual impacts of the proposed fence, sections of the fence will still be visible, and the fence, even as obscured by the planters, will introduce a constructed vertical feature into the landscape. Furthermore, the height of the fence could be reduced, or the chain link backing removed, in order to decrease its obtrusiveness.

Therefore, for all of the reasons stated above, the appeal does raise a substantial issue regarding the visual resource protection policies of City's certified LUP, as cited above.

Sensitive Resources

The appeal by Commissioners Caldwell and Kruer asserts that the approved project raises issues with respect to the following policies of the City of Carpinteria LCP:

LCP Policy OSC-2c, which states:

Preserve all coastal bluff scrub habitat designated as open space with an appropriate buffer.

LCP Policy OSC-2d, which states:

Designate all significant areas of coastal sage and bluff scrub habitat as open space.

LCP Policy OSC-7, which states:

Conserve native plant communities

Section 30240 of the Coastal Act, which is incorporated by reference in LCP Policy LUP-1a and states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The subject parcel is an approximately 8.4 acre bluff top lot located at the terminus of Dump Road, within Bluffs Area "0" as designated by the City's LUP. The parcel is located north of the

Pacific Ocean, east of Tar Pits Park, west of a privately owned open space area containing coastal sage scrub habitat. The approved project includes construction of a 48 inch high split rail and chain link fence enclosing an approximately 2.4 acre area that is located in the southwest portion of the parcel, immediately north of the coastal bluff face and west of Tar Pits Park.

The majority of the area enclosed by the approved fence consists of an existing parking lot; however, the western line of the approved fence is located on a slope below the parking area. This slope contained coastal bluff scrub vegetation prior to the recent recapping of a defunct burn dump that exists below the site. The slope will be revegetated with native coastal bluff scrub vegetation upon completion of the recapping project. The subject site is designated P/OS (Public or Private Recreation and/or Open Space) in the effective Land Use Map for the certified LUP.

As noted above, the LUP contains policies for the protection of native plant communities, and requires a buffer for preservation of coastal bluff scrub habitat within open space. However, the approved fence is located within a coastal bluff scrub habitat area in an area designated as open space, and no buffer is provided. Alternatives exist to locate the approved fence outside of the coastal bluff scrub habitat area. The project was not conditioned to provide a buffer or other protection for this habitat area.

In addition, Table OSC-1 of the LUP designates Significant Native Plant Communities such as coastal sage scrub and coastal bluff scrub on the Carpinteria Bluffs as ESHA, to be determined on a site-specific basis. No determination was made in this case.

Therefore, for all the reasons stated above, the appeal does raise a substantial issue regarding the sensitive resource protection policies of City's certified LUP, as cited above.

F. Conclusion

For the reasons discussed above, substantial issue is raised with respect to the conformity of the project in regards to the public access, visual resource, and sensitive resource protection policies of the City of Carpinteria LCP and the public access policies of the Coastal Act. Therefore, the Commission finds that the appeals filed by Commissioners Caldwell and Kruer and Susan Allen raise a substantial issue as to the City's application of the policies of the LCP and the public access policies of the Coastal Act in approving CDP 05-1202-DP/CDP.

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