

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Filed: 5/26/06
49th Day: 7/14/06
180th Day: 11/22/06
Staff: Lillian Ford
Staff Report: 6/23/06
Hearing Date: 7/12/06



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STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Carpinteria
LOCAL DECISION: Approval with Conditions
APPEAL NO.: A-4-CPN-06-061
APPLICANT: Venoco, Inc.
APPELLANT: Commissioners Caldwell and Kruer; Susan Allen
PROJECT LOCATION: Dump Road in the City of Carpinteria, Santa Barbara County.

PROJECT DESCRIPTION: Sign program that includes approval of 20 unpermitted signs, removal of six unpermitted signs, and addition of one new sign. **Exhibit 4** includes photos of the 20 approved as-built signs and the six existing signs to be removed. The new sign, which is required by Condition of Approval No. 15, would be located on Dump Road adjacent to Carpinteria Avenue and would direct cars to public coastal access parking at Carpinteria Bluffs Park, approximately ½ mile east. Three of the approved as-built signs (Signs 4, 9, and 22) state: "Private Property. Right to Pass by Permission, and Subject to Control, by the Owner Only, Section 1008, Civil Code. Venoco." Another sign (Sign 21) states: "The use, possession, or being under the influence of alcohol or illegal drugs and the possession of weapons or explosives is strictly prohibited on company premises. Entry on company premises constitutes consent to and recognition of the right of the company to conduct searches. Venoco." The remainder of the approved as-built signs regulate traffic and parking, identify businesses, or prohibit trespass into fenced-off areas of adjacent property. The six signs to be removed include two signs (Signs 16 and 26) that prohibit skateboarding and bicycle riding; two signs (Signs 19 and 24), that state: "Private Road Keep Out;" a railroad crossing sign with a sign identical to Signs 4, 9, and 22 attached (Sign 15); and a sign identifying the marine terminal (Sign 13).

SUBSTANTIVE FILE DOCUMENTS: City of Carpinteria Local Coastal Program; City of Carpinteria Final Development Plan 05-1204-DP/CDP (City Council Approval dated May 8, 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 **page 4**.

I. APPEAL JURISDICTION

The project site consists of areas on either side of Dump Road, an approximately 3/10 mile long private road extending from Carpinteria Avenue to the Union Pacific Railroad tracks just 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 site 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. 05-1204-DP/CDP) issued by the City for the sign program on May 12, 2006. Following receipt of the Notice of Final Action, a 10 working day appeal period was set and notice provided beginning May 15, 2006 and extending to May 26, 2006.

An appeal was filed by Commissioners Caldwell and Kruer, during the appeal period, on May 26, 2006. An appeal of the City's action was also filed by Susan Allen, during the appeal period, on May 26, 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-06-061 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-06-061 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. 05-1204-DP/CDP, and subject to appeal, is the City's approval of a development permit and coastal development permit for a sign program that maintains 20 existing signs, adds one new sign, and removes six existing signs. **Exhibit 4** includes photos of the 20 approved as-built signs and the six existing signs to be removed. The new sign, which is required by Condition of Approval No. 15, would be located on Dump Road adjacent to Carpinteria Avenue and would direct cars to public coastal access parking at Carpinteria Bluffs Park, approximately ½ mile east. Several of the approved as-built signs also pertain to public access. Three of the signs (Signs 4, 9, and 22) state: "Private Property. Right to Pass by Permission, and Subject to Control, by the Owner Only, Section 1008, Civil Code. Venoco." Another sign (Sign 21) states: "The use, possession, or being under the influence of alcohol or illegal drugs and the possession of weapons or explosives is strictly prohibited on company premises. Entry on company premises constitutes consent to and recognition of the right of the company to conduct searches. Venoco." The remainder of the approved as-built signs regulate traffic and parking, identify businesses, or prohibit trespass into fenced-off areas of adjacent property. The six signs to be removed include two signs (Signs 16 and 26) that prohibit skateboarding and bicycle riding; two signs (Signs 19 and 24), that state: "Private Road Keep Out;" a railroad crossing sign with a sign identical to Signs 4, 9, and 22 attached (Sign 15); and a sign identifying the marine terminal (Sign 13).

The project is located along the length of Dump Road, an approximately 3/10 mile long private road extending from Carpinteria Avenue to the Union Pacific Railroad tracks in the City of Carpinteria, Santa Barbara County.

Project plans are attached to this report as **Exhibit 4**.

B. Background

The approved project is located along the length of Dump Road, an approximately 3/10 mile long private road extending from Carpinteria Avenue to the Union Pacific Railroad tracks in the City of Carpinteria, Santa Barbara County. Dump Road is owned by Venoco and provides access to Venoco's Carpinteria Oil and Gas Plant, other businesses located along Dump Road, and the Carpinteria Oil and Gas Plant Pier. Dump Road also provides access to several coastal recreation sites, including Tar Pits Park, a City-owned park that provides beach and bluff access, the Harbor Seal Haul Out overlook, a popular viewpoint for observing and monitoring a large colony of harbor seals, and the public Coastal Vista Trail. Dump Road is also the only vertical access way to the coast with a controlled rail crossing for approximately one mile to the west and two miles to the east. Although privately owned, evidence of prescriptive rights to Dump Road exists, although no formal study has yet been done.

The City's original LUP (certified in January 1980) 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:

....

5. Dump Road;

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;

....

Dump Road is also shown as a proposed Coastal Access Point on Figure OSC-4 of the City's updated LUP.

C. City Approval

In January 2005, Venoco Inc. submitted a proposal to the City of Carpinteria to install a 20 foot long gate across Dump Road. The proposed project also included a sign program that addressed the 26 unpermitted signs located along Dump Road. On February 6, 2006, the City of Planning Commission approved the project with conditions. On February 13, 2006, during the appeal period for the Planning Commission's action, Susan Allen submitted an appeal of the Planning Commission's action, on grounds that the gate was inconsistent with the public access

policies of the City's LCP. On March 13, 2006, the City Council voted 3/2 to uphold the appeal and deny the proposed project. The hearing was continued to April 10, 2006 to allow staff to prepare findings. Upon the request of Venoco, the hearing was further continued until May 8, 2006. On April 19, 2006, Venoco withdrew their proposal for the gate from the subject application. On May 8, 2006, the City Council approved the sign program. 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 includes several signs that discourage public access to important coastal recreational areas and thus raises issues in regards to consistency with the public access policies of the certified LUP and 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. In addition, the appeal alleges that the approved project is inconsistent with LUP Policy OSC-15, IP 70, which calls for continuation of the development of a coastline trail to extend from Carpinteria City Beach to Rincon Beach Park with vertical access point placed as frequently as possible to encourage public access. The appeal asserts that Dump Road is a primary vertical access route to the coastline trail referred to in LUP Policy OSC-15, IP 70, and notes that Figure OSC-4 of the LUP designates Dump Road as a proposed "coastal access point." 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.

The appeal filed by Susan Allen is attached as **Exhibit 2**. The appeal contends that the approved project is inconsistent with LUP Policies OSC-2g and OSC-14a, which require increased public access, including for the disabled and elderly, and Policy OSC-14k, which prohibits new development from interfering with or diminishing public access.

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. 05-1204-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 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.

Figure OSC-4, which is attached as **Exhibit 5**.

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.

Policy OSC-15, IP 70, which states:

Continue the development of a coastline trail to extend from Carpinteria State Beach to Rincon Beach Park with vertical access points placed as frequently as possible to encourage public 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 approved project is located along the length of Dump Road, an approximately 3/10 mile long private road extending from Carpinteria Avenue to the Union Pacific Railroad right-of-way in the City of Carpinteria, Santa Barbara County. Dump Road is owned by Venoco, Inc. and provides access to Venoco's Carpinteria Oil and Gas Plant, other businesses located along Dump Road, and the Carpinteria Oil and Gas Plant Pier. Dump Road also provides access to several coastal recreation sites, including Tar Pits Park, a City-owned park that provides beach and bluff access, the Harbor Seal Haul Out overlook, a popular viewpoint for observing and monitoring a large colony of harbor seals, and the public Coastal Vista Trail.

The approved project consists of a sign program that includes approval of 20 unpermitted signs, removal of six unpermitted signs, and addition of one new sign. **Exhibit 4** includes photos of the

20 approved as-built signs and the six unpermitted signs to be removed. The new sign, which is required by Condition of Approval No. 15, would be located on Dump Road adjacent to Carpinteria Avenue and would direct cars to public coastal access parking at Carpinteria Bluffs Park, approximately ½ mile east. Several of the approved as-built signs also pertain to public access. Three of the signs (Signs 4, 9, and 22) state: "Private Property. Right to Pass by Permission, and Subject to Control, by the Owner Only, Section 1008, Civil Code. Venoco." Another sign (Sign 21) states: "The use, possession, or being under the influence of alcohol or illegal drugs and the possession of weapons or explosives is strictly prohibited on company premises. *Entry on company premises constitutes consent to and recognition of the right of the company to conduct searches.* Venoco" (emphasis added). The remainder of the approved as-built signs regulate traffic and parking, identify businesses, or prohibit trespass into fenced-off areas of adjacent property. The six signs to be removed include two signs (Signs 16 and 26) that prohibit skateboarding and bicycle riding; two signs (Signs 19 and 24), that state: "Private Road Keep Out;" a railroad crossing sign with a sign identical to Signs 4, 9, and 22 attached (Sign 15); and a sign identifying the marine terminal (Sign 13).

As noted above, Dump Road provides access to several coastal recreation sites. It provides the only vehicle access to Tar Pits Park, a City-owned park that provides beach and bluff access, the Harbor Seal Haul Out overlook, a popular viewpoint for observing and monitoring a large colony of harbor seals, and to other bluffs areas, including a Venoco-owned bluff top parking lot that provides scenic views of the ocean and to which prescriptive rights may exist. These sites are used by elderly and disabled members of the community, who rely on vehicular transportation for access. Dump Road is also the only vertical access way to the coast with a controlled at-grade rail crossing for approximately one mile to the west and two miles to the east. As such, it also serves as a primary access way for pedestrians and bicyclists seeking access to Tar Pits Park, the Harbor Seal Haul Out overlook, and the network of trails that are located seaward of the railroad tracks.

Thus, although it is privately owned, Dump Road has been, and continues to be, used by the public as a pedestrian, bicycle, and vehicular accessway to Tar Pits Park, the Harbor Seal Hauling Grounds overlook, the network of trails that are located seaward of the railroad tracks, and to other bluffs areas, including parking areas to which prescriptive rights may exist. Prescriptive rights to Dump Road may also exist. The City's original LUP (certified in January 1980, and superseded by the current LUP in 2003) 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:

....

5. Dump Road;

8. 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;

....

Section 30210 of the Coastal Act, which is incorporated into the LUP by Policy LU-1a, requires provision of maximum public access and recreational opportunities. Similarly, Policies LU-1 and OSC-14a of the LUP call for increased public access and recreational opportunities, including for the disabled and elderly. In addition, Policy OSC-14k of the LUP states that new development shall not interfere with or diminish public access acquired through use, custom, or legislative action, and states that this policy shall be interpreted to allow flexibility in accommodating both new development and continuation of historic public parking and access. In addition, Policy OSC-4, IP 20 requires provision of adequate parking to maximize public access to coastal recreation areas, including Tar Pits Park, Harbor Seal Hauling Grounds overlook, and the Carpinteria Bluffs. Furthermore, Policy OSC-15, IP 70 calls for continuation of the development of a coastline trail to extend from Carpinteria City Beach to Rincon Beach Park with vertical access points placed as frequently as possible to encourage public access. Dump Road is a primary vertical access route to the coastline trail referred to in Policy OSC-15, IP 70. Figure OSC-4 of the LUP designates Dump Road as a proposed "coastal access point."

The City found that the applicant's proposal to remove six of the unpermitted signs [two signs (Signs 16 and 26) that prohibit skateboarding and bicycle riding; two signs (Signs 19 and 24), that state: "Private Road Keep Out;" a railroad crossing sign with a sign identical to Signs 4, 9, and 22 attached (Sign 15); and a sign identifying the marine terminal (Sign 13)] would ensure that the sign program will not interfere with the public's historic pedestrian use of or access to the Coastal Vista Trail or Tar Pits Park. However, the approved sign program includes several signs that discourage public access, including three signs that state "Private Property. Right to Pass by Permission, and Subject to the Control, By the the Owner Only, Section 1008, Civil Code," as well as a sign stating that "...Entry on company premises constitutes consent to and recognition of the right of the company to conduct searches." As noted above, Dump Road has been historically (and is at present) used for public access to coastal recreation areas, and prescriptive rights to such use may exist. Additionally, the City action included a condition of approval requiring the applicant to provide a sign on Dump Road to direct cars to public parking in the area for coastal access. The exact wording of such a sign has not yet been developed. However, there is some evidence that the public may have parked in this area, or at the end of Dump Road to gain access to trails and park areas. Such a sign could discourage the continuation of such use. Therefore, the approved project raises issues as to its consistency with the public access policies of the LUP and the Coastal Act.

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-15, IP 70, OSC-14a, OSC-14k, Figure OSC-4, and the public access policies of the Coastal Act.

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 policies of the City of Carpinteria LCP and of the Coastal Act. Therefore, the Commission finds that the appeals filed by Commissioners Caldwell and Krueger 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 05-1204-DP/CDP.

[CLICK HERE FOR LINK TO EXHIBITS PART 1](#)
[CLICK HERE FOR LINK TO EXHIBITS PART 2](#)