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Appeal Filed: 2/18/2015
49th Day: Waived
Staff: Kevin Kahn - SC
Staff Report: 11/22/2017
Hearing Date: 12/13/2017

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-SLO-15-0007

Applicant: Centrally Grown Holdings LLC

Appellants: Khosro Khaloghli

Local Government: San Luis Obispo County

Local Decision: County coastal development permit (CDP) DRC2012-00119, approved by the San Luis Obispo County Board of Supervisors on January 13, 2015

Location: 7432 Exotic Garden Drive (APN 013-381-002) in the Cambria area of San Luis Obispo County

Project Description: Structural modifications to existing buildings to accommodate additional visitor-serving uses, construction of a new restroom and children's play structure, and related improvements at the existing Centrally Grown visitor-serving commercial facility.

Staff Recommendation: No Substantial Issue

Important Hearing Procedure Note: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify at

this stage of the appeal. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo County approved a CDP allowing for various improvements to Centrally Grown, which is a multi-building visitor-serving facility comprised of a restaurant, a market, retail space, and gardens located just outside of the unincorporated community of Cambria. The County's approval authorized various structural improvements to nine existing buildings to accommodate additional visitor-serving uses, as well as construction of a new restroom and a children's play structure, and other related improvements (e.g., new/relocated decks). The Appellant contends that the County's approval inaccurately framed the scope and extent of development. Namely, the Appellant contends that the project constitutes more than "minor" repairs and additions, but rather, and in conjunction with other previous County-approved development on-site, represents a substantial increase in intensity of use that should be holistically analyzed.

After reviewing the local record, staff has concluded that the appeal does not raise a substantial issue with respect to the project's conformance with the LCP. Centrally Grown is an important visitor-serving use, and is specifically identified in the LCP as a "visitor-serving priority area" where development that aids in the public's ability to recreate along the coast is specifically identified and envisioned. In addition, all County-authorized development is located within the already improved Centrally Grown property, which is located on the landward side of Highway 1, and therefore the approved project will not impact any LCP-protected sensitive coastal resources, such as public blue water views or sensitive habitats. Furthermore, the development authorized by the County facilitates an important Coastal Act-priority and LCP-envisioned visitor-serving use at this existing developed site.

In conclusion, the County-approved project meets core Coastal Act and LCP objectives in terms of enhancing public recreational opportunities by providing visitor-serving commercial uses within existing developed areas so as to protect sensitive natural coastal resources. As such, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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APPENDICES

- Appendix A – Substantive File Documents
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EXHIBITS

- Exhibit 1 – Location Maps
- Exhibit 2 – County’s Findings, Conditions, and Approved Project Plans
- Exhibit 3 – Appeal of San Luis Obispo County’s CDP Decision
- Exhibit 4 – Applicable San Luis Obispo County LCP Policies and Standards

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. 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 affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-SLO-15-0007 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-SLO-15-0007 does not present 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 Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

A. CENTRALLY GROWN SITE HISTORY

The project site has a long permitting history, beginning in 1961, prior to the passage of the Coastal Act, when San Luis Obispo County authorized the construction of the “Exotic Gardens¹.” This visitor-serving center included a commercial gift shop, a detached single-family dwelling, commercial nursery and demonstration garden, and numerous accessory structures and greenhouses. In 1980, the County approved additional improvements to the Exotic Gardens site, including a restaurant (“the Hamlet”), cocktail lounge, gift shop, additional parking spaces, walkways, landscaping, signage, and access road upgrades. That approval also required the connection of the project site to the Cambria Community Service District’s community water system and on-site septic for wastewater disposal. The Coastal Commission authorized these improvements in its 1981 CDP approval (CDP 423-16).

Subsequent to these approvals, the County authorized additional improvements to the Centrally Grown site, finding that such proposed development was minor and in substantial conformance with existing permits.² This development included additional and improved parking areas, and upgrading the site and existing structures to meet current Americans with Disabilities Act accessibility requirements and State and County Building Codes (including a new elevator, upgraded septic system, etc.).

¹ The site was originally called Exotic Gardens until it was renamed Centrally Grown in the 2000s.

² IP Section 23.02.038 allows the Planning Director to approve minor modifications to approved development subject to certain criteria, including that the proposed modification is consistent with the LCP.

B. PROJECT DESCRIPTION AND LOCATION

The County-approved project authorizes additional improvements to Centrally Grown, a multi-building visitor-serving facility comprised of a restaurant, a market, retail space, and gardens located at 7432 Exotic Garden Drive just outside of the unincorporated community of Cambria. The County's approval authorized various structural improvements to nine existing buildings to accommodate additional visitor-serving uses, construction of a new restroom and children's play structure, and other related improvements (e.g., new/relocated decks). The specific improvements authorized are as follows:

- Building 1: Addition of 222 square feet of deck at the rear of the restaurant and use of the existing 305-square-foot front deck as a viewing deck for restaurant patrons.
- Buildings 2/3: Conversion of the existing residence and storage space to retail; addition of a 380-square-foot deck; and interior/exterior structural modifications as required by Building Code.
- Building 4: Conversion of an existing commercial structure to accessory restaurant use for patron overflow, banquets, or meetings only; addition of 392 square feet of deck; interior/exterior structural modifications as required by Building Code.
- Buildings 5/6: Interior/exterior structural modifications as required by Building Code.
- Building 7: Addition of a new two-story restroom.
- Building 8: Structural modifications as required by Building Code.
- Building 9: Authorization to use an existing single-family dwelling as a vacation rental.
- Property rear: New children's play structure

See **Exhibit 1** for location maps.

C. SAN LUIS OBISPO COUNTY CDP APPROVAL

On June 6, 2014, the San Luis Obispo County Planning Department Hearing Officer considered and approved the Applicant's proposed CDP (application number DRC2012-00119). The Appellant appealed the Hearing Officer's approval to the Board of Supervisors. The Board held a public hearing to consider the appeal on January 13, 2015, at which time the Board denied the appeal and upheld the Hearing Officer's original approval, subject to specific findings and conditions of approval (see **Exhibit 2**).

A complete and legally sufficient Notice of Final County Action (NOFA) from the County for the CDP was received in the Coastal Commission's Central Coast District Office on February 18, 2015. The Coastal Commission's ten-working-day appeal period for this action began on February 19, 2015 and concluded at 5pm on March 4, 2015. One valid appeal, submitted by Khosro Khaloghli, was received during the appeal period (see **Exhibit 3**).

D. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions

are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or 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 the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (Coastal Act Sections 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (Coastal Act Section 30603(a)(5).) This project is appealable because most of the project is not designated as a principally permitted use within the County's Recreation land use category, and because part of the site is located within 300 feet of the beach, within 300 feet of a coastal bluff, and within 100 feet of a park or recreation area³.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.⁴ Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing (upon making a determination of "substantial issue") and finds that the proposed development is in conformity with the certified LCP, the Commission must issue a CDP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. Because this project is not located between the nearest public road and the sea, this additional finding would not need to be made if the Commission were to approve the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted in writing. (California Code of Regulations, Title 14, Section 13117.) Any person may testify during the de novo CDP determination stage of an appeal (if applicable).

³ IP Section 23.01.043(c)(3)(ii) defines a "Sensitive Coastal Resource Area" as including areas within 100 feet of a park or recreation area, and development within this area is appealable to the Coastal Commission.

⁴ The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has considered the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of a local government's CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

E. SUMMARY OF APPEAL CONTENTIONS

The Appellant does not identify any specific LCP provisions with which the County-approved project does not conform, but rather contends that the County’s approval inaccurately framed the scope and extent of development. Namely, the Appellant contends that the project constitutes more than “minor” repairs and additions, but rather, and in conjunction with other previous County-approved development on-site, represents a substantial increase in intensity of use that should be holistically analyzed. See **Exhibit 3** for the full text of the appeal contentions.

F. SUBSTANTIAL ISSUE DETERMINATION

1. Applicable LCP Provisions

The County’s LCP includes policies and standards that protect and encourage recreation and visitor-serving opportunities broadly, as well as at this specific project site. Specifically, the LCP defines visitor-serving commercial/recreational facilities as a high priority use, and requires the protection of existing visitor-serving facilities and encourages the creation of new ones, all to ensure that the public has the ability to recreate along the coast. The Estero Area Plan (EAP), which is a component of the LCP’s Land Use Plan, includes additional policies specific to the broader Cambria community. EAP Policies 29 and 30 specifically identify the Centrally Grown project site as a “visitor-serving priority area,” and identify a series of allowable uses on the site, including a restaurant and gift shop. Thus, the LCP explicitly identifies the Centrally Grown site as appropriate for visitor-serving uses.

See **Exhibit 4** for the text of the applicable LCP policies and standards.

2. Analysis

As discussed above, the Appellant does not identify specific LCP provisions with which the County-approved project is inconsistent, but rather argues that this project, in conjunction with other previous development authorized by the County over the years, constitutes a substantial increase in intensity of use and should be holistically analyzed altogether. However, as described earlier, the County found the previously proposed development to be minor and consistent with and authorized by all previously approved permits, including the 1981 CDP, which authorized a broad range of visitor-serving uses at this multi-building, multi-acre site. This earlier County determination was not challenged at that time, so the County’s decision is considered final for current purposes. And in addition, regardless of this past development, the development authorized under the CDP approved by the County could reasonably be construed as the County’s holistic “look” at the entire project site. In other words, the CDP on appeal that authorizes the proposed work addresses each building on site, its uses, and potential impacts to coastal resources. As such, the County incorporated conditions that apply to the *entire* site (including in terms of water quality protection, drainage, temporary events, and lighting – see **Exhibit 2**), so as to ensure that the entire Centrally Grown site and all of its development components meet applicable LCP coastal resource protection standards. And, as also described above, the County’s approval can be found consistent with the LCP, including because it authorizes additional visitor-serving uses within the existing footprint of this already developed LCP-identified visitor-serving site. Thus, the County-approved project authorizes additional improvements and repairs to this important visitor-serving facility in a manner that does not

adversely impact other coastal resources. Thus, the approved project does not raise a substantial issue of LCP conformance.

G. CONCLUSION

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for the development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above in footnote 4 above, the Commission has in the past considered the following factors in determining whether the issues raised in a given case are “substantial”: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. With respect to the first factor (degree of factual and legal support for the government’s decision), the appeal contentions do not cite specific LCP provisions with which the County-approved project is inconsistent, but rather state that the project should be holistically analyzed in conjunction with past approvals. However, the County reviewed all proposed development in light of the requirements of the LCP and conditioned its approval accordingly, and thus there is adequate factual and legal support for the County’s decision.

With respect to the second factor (extent/scope of development as approved or denied), the approved project would result in additional minor structural improvements and repairs to nine buildings within the existing development/disturbance envelope of the Centrally Grown site. This factor supports a finding of no substantial issue. With respect to the third factor (significance of coastal resources affected by the decision), the approved project would result in additional visitor-serving uses at this important existing visitor-serving site. Conversely, the Appellant has not identified any specific coastal resource or LCP policy which the approved development will adversely affect. This factor also supports a finding of no substantial issue. Thus, the extent and scope of the approved development is relatively minor, and the use will not have any significant adverse effects on coastal resources, and conversely will in fact have significant benefits to coastal public access and recreation, which are key use priorities of the Coastal Act.

With respect to the fourth factor (precedential value of the County’s decision for future interpretations of its LCP), because the Appellant has not identified how the County’s approval is inconsistent with any specific policy of the LCP, this project is not expected to set an adverse precedent for future interpretation of the LCP. With respect to the fifth factor (whether the appeal raises only local issues as opposed to those of regional or statewide significance), the availability of visitor-serving recreational opportunities is, in general, an issue of statewide significance. The County-approved project, however, is consistent with the LCP and provides for this important visitor-serving use and does not on its own raise an issue of regional or statewide significance in

context of provision of adequate visitor-serving use in the part of the coastal zone.

In short, the Appellant's contentions do not raise a substantial issue with respect to consistency with applicable LCP policies and standards and are further adequately addressed by the County's conditions of approval. Based on the foregoing, including when all five substantial issue factors are weighed together, the appeal contentions do not raise a substantial LCP conformance issue and thus the Commission declines to take jurisdiction over the CDP application for this project.

For the reasons stated above, the Commission finds that Appeal Number A-3-SLO-15-0007 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

A-3-SLO-15-0007 (Centrally Grown)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Notice of Final County Action

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- County Planning Staff