

CALIFORNIA COASTAL COMMISSION

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Filed: 2/22/17
180th Day: 8/21/17
Staff: K. Carney-SD
Staff Report: 4/20/17
Hearing Date: 5/11/17

STAFF REPORT: AMENDMENT

Application No.: 6-15-0333-A1

Applicant: Nick Haggar

Agent: Alan Block

Location: 873 Palomar Street, Chula Vista, San Diego County
(APN No: 622-011-27)

Original Project Description: Construction of a 20-ft. high canopy and 4,435 sq. ft. gas station with 1,000 sq. ft. carwash and a 20-ft. high 4,000 sq. ft. foodmart/restaurant building on a 43,201 sq. ft. vacant lot.

Proposed Amendment: Construct a 20-ft.tall tower addition to the previously approved building and install a 45-ft. tall freestanding pole sign.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to construct a 20-foot tall tower addition on top of the existing 20-foot high food mart/restaurant building and install a 45-foot high freestanding pole sign. Approval of this amendment would result in a development that was previously deemed inconsistent with the Coastal Act and required to be revised by the Commission. In November 2011, the Commission approved Coastal Development Permit (CDP) No. 6-11-60 for the construction of an approximately 5,200 sq. ft., 6-island gas station, car wash, and food mart/restaurant building. That project included construction of a 40-foot high tower as part of

the food mart building. However, the Commission found that the tower element would result in unacceptable impacts to public views, community character, and the scenic quality of the area, and required the project to be redesigned to limit the building's height to no more than 20 feet. A one-year extension of the permit was granted in November 2013; however, the permit lapsed in November 2014. The applicant applied for a new permit, and in May 2015, the Commission approved CDP No. 6-15-0333 for the construction of a 20-foot high canopy, a 4,435 sq. ft. gas station with a 1,000 sq. ft. car wash, and a 20-foot tall, 4,000 sq. ft. food mart/restaurant building. The project proposed with that application was the same project previously approved by the Commission via CDP No. 6-11-60 and conformed to the Commission's prior conditions of approval.

The subject amendment proposal consists of the previously rejected 40-foot high tower as well as an additional 45-foot high freestanding pole sign. A similar 45-foot high freestanding pole sign was originally proposed for CDP No. 6-11-60, however, consultation with staff resulted in removal of the pole sign from the project before Commission action.

The major coastal act issues associated with the project include direct blockage of scenic resources and bulk, scale, and community character inconsistencies. The proposed amendment would result in a decorative tower sign and freestanding pole sign that is incompatible with the surrounding community character, would cause direct impacts to scenic resources, would be inconsistent with the intent of the City's LCP in terms of signage, and would set an adverse precedent for the construction of tall buildings and freeway signs. A large, bulky, 40-foot high tower with commercial signage is not the appropriate scale of development for this scenic area adjacent to and overlooking San Diego Bay and is inconsistent with the surrounding community character. As the community transitions from residential and industrial to commercial retail, light industrial, and office, the development of this site is expected to set the pattern of development of the surrounding area. There are no similar freeway signs in the Coastal Zone in Chula Vista at this time, and allowing the subject sign to go forward would likely result in a request for similar signs, both in and out of the Coastal Zone. For example, there is an existing gas station on the east side of the freeway, just north side of Palomar Street that does not have a freeway sign at this time; allowing a new freeway sign for the subject business could result in surrounding businesses requesting the same to remain competitive, resulting in a proliferation of freeway signs. The City of Chula Vista does not have a certified LCP for this area and allowing the proposed development would set an adverse precedent for development and signage and could prejudice the ability of the City of Chula Vista to adopt a certified LCP for the subject area.

The applicant states that the tower addition and signage are necessary for the viability of the existing business; however, in the years since prior Commission action on this site, no changed circumstances have arisen, including progress on a certified LCP for this area or approval of any neighboring buildings or signage similar to what is currently proposed. The applicant developed the site fully aware of the conditions and the Commission's restrictions to preserve coastal resources. Thus, the proposed amendment is not consistent with Chapter 3 of the Coastal Act, as well as the record and intent of the Commission's past actions, and staff recommends denial.

The standard of review is Chapter 3 of the Coastal Act.

Commission staff recommends **denial** of coastal development permit amendment 6-15-0333-A1.

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EXHIBITS

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[Exhibit 2 – Site Plan](#)

[Exhibit 3 – Proposed tower/signage](#)

[Exhibit 4 – Bay & Salt Works Views](#)

[Exhibit 5 – Visual simulations](#)

[Exhibit 6 – Underlying permit view corridor](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-15-0333-A1 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **NO** vote on the foregoing motion. Passage of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby denies coastal development permit 6-15-0333-A1 and adopts the findings set forth below on grounds that the development as conditioned will not be in conformity with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have not been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

A. AMENDMENT PROJECT DESCRIPTION

The subject site is currently developed with a gas station, car wash, and an approximately 4,000 sq. ft. foodmart/restaurant building. The existing restaurant building is 20 feet high, and the canopy over the gas station is approximately 20 feet high. The proposed amendment would allow construction of a 20-foot tall, 750 sq. ft. decorative tower addition on top of the eastern portion of the existing food mart/restaurant building and installation of a new 45-foot tall, freestanding pole sign located on the northeastern portion of the property ([Exhibit 2 & 3](#)).

The subject site is located in the southern portion of the City of Chula Vista, just west of Interstate 5, approximately 500 feet inland of San Diego Bay and the South San Diego Bay salt ponds ([Exhibit 1](#)). The area is within the boundaries of the City of Chula Vista as a result of the 1985 Montgomery Annexation, but is not part of the City's certified LCP. It is assumed that the City's certified LCP will eventually be amended to include this area; until that time, Chapter 3 of the Coastal Act is the standard of review.

B. ORIGINAL PROJECT DESCRIPTION/HISTORY

Development of the subject site was first approved on November 4, 2011 under CDP No. 6-11-60. This CDP allowed for the construction of an approximately 5,200 sq. ft., 6-island gas station, car wash, and food mart/restaurant building on a vacant lot. At that time, the applicant was proposing to include the same 20-foot tall, 750 sq. ft. decorative tower element on the restaurant building that is the subject of this amendment, resulting in a 40-foot tall building. The applicant had originally included construction of a freestanding pole sign as well, but after discussions with staff, the applicant removed this element from the project.

The Commission approved the development with special conditions requiring the project to be redesigned to remove the 20-foot high tower such that no portion of the building would be over 20 feet in height. In its approval, the Commission found that even at 20 feet in height, the proposed new buildings would encroach into existing public views of San Diego Bay, but because the structures on the site had been sited in a manner such that direct view blockage would be limited, these impacts could be minimized to a level less than significant with conditions requiring establishment of a view corridor where structures and landscaping are limited. However, the 40-foot high decorative tower element proposed was found to be out of scale and inconsistent with the character of the community, which then and now consists of one- and two-story buildings. Further, given that there are many vacant lots in the area surrounding the subject site, the Commission found that it would set an adverse precedent for future development to allow development on this site with the bulk, scale, and height of a 40-foot high tower. The Commission determined that only as revised to limit the height of the building to 20 feet and proposed landscaping in the northern portion of the site to no higher than 5 feet, could the project be found consistent with the visual protection policies of the Coastal Act. To further protect visual quality, the permit also limited signage on the site to only monument signs, not to exceed eight feet in height, or facade signs. No tall, freestanding pole or roof signs were allowed.

A one-year time extension (CDP No. 6-11-60-E1) was granted in November 2013, but the permit subsequently expired on November 4, 2014.

In 2015, the applicant applied for a new permit and proposed the same development that was previously approved by the Commission, including a revised project design that conformed to the Commission's prior conditions of approval (CDP No. 6-15-0333). This permit allowed for the construction of a 20-foot high canopy and 4,435 sq. ft. gas station, with a 1,000 sq. ft. car wash and a 20-foot high, 4,000 sq. ft. food mart/restaurant building. The Commission found that because the building height would not exceed 20 feet, and no freestanding pole signs or other signs exceeding eight feet in height were proposed, the project could be found consistent with the visual protection policies of the Coastal Act. While the underlying permit includes a special condition requiring the submittal of final plans, it does not explicitly limit the maximum allowed height of the building because the project as proposed would not exceed 20 feet in height. The permit was released and the development was constructed in 2016.

C. SCENIC AND VISUAL QUALITY

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas,...

The certified Chula Vista Bayfront Master Plan LCP, certified by the Commission in 2012, states:

19.85.005 Sign regulations.

The size, location, and design of all signs in the LCP Planning Area shall be subject to the following:

A. No freestanding sign shall be greater than eight feet in height and signs shall be subject to the regulations of Chapter 19.60 CVMC, Signs, incorporated herein by reference, unless modified by the provisions of this Bayfront Specific Plan.

The subject site is located at the southwestern corner of the on-ramp to Interstate 5 (I-5) and Palomar Street. It is located well above freeway elevation and most development on the site is not visible from the freeway. The Palomar Street bridge crossing over I-5 (just northeast of the site) is a high point in the vicinity. From west of I-5, the overcrossing and the intersection with the southbound I-5 off-ramp, and the northbound I-5 on-ramp, there are existing brief but expansive views across the northern portion of the subject site of the bay, the salt ponds and the historic South Bay Western Salt Works building and its salt “mountains.” ([Exhibit 4](#))

Direct View Blockage

In its approval of the original project, the Commission acknowledged that some existing views of the Western salt works facilities and San Diego Bay would inevitably be impacted by development of the site. However, the siting of the buildings and canopy minimized those impacts. The bay views are primarily across the northern portion of the site, and the development was designed so that the bulk of the structures are located on the southern portion of the lot. Some unobstructed bay views still exist across the northernmost portion of the site, and some views towards the bay also remain under the existing 20-foot high gas station canopy.

Thus, the siting of the existing development minimizes direct encroachment on bay views to the extent feasible. To further protect and preserve views across the site from the sidewalk and public streets, conditions on the existing permit establish a view corridor along the northern portion of the site and limit vegetation within the view corridor to plants maintained at a height of no more than five feet. ([Exhibit 6](#))

In terms of the subject amendment, while the proposed tower addition and freestanding pole sign would not block water views of the bay, the tower would block views of the historic Western Salt Works building and adjacent salt “mountains.” ([Exhibit 4](#)) The applicant has indicated that the design of the proposed tower addition was required by the City of Chula Vista (in its approval of the original development, before the project was revised and constructed consistent with the Commission’s action) to suggest the form of the Western Salt Works building and to help offset the loss of views of the actual Salt Works building resulting from the proposed construction. In the City’s approval of the tower associated with the original project, City staff indicated that the design represents an attempt to incorporate building elements that express the history of the area. The City also stated that the building tower incorporates and preserves the history of the area and contributes to fulfilling the vision of the Chula Vista General Plan, which calls for the incorporation of elements related to the historical architecture and structures in the area. The City previously indicated that the site is considered a gateway to the city and requires the incorporation of landmark architectural elements.

The Western Salt Works is an iconic facility that has been located on south San Diego Bay since the 1870s. Both the building and the salt “mountains” are important features of the community, and preserving views of the Salt Works operations is important for preserving the scenic and visual quality of the area. A building design that echoes some of the features of the Salt Works is a poor substitute for preserving views of the facility itself. The City approved the existing structure in its current form and is not requiring construction of the proposed tower or sign; however, if further “landmark architectural elements” are desired, they should be ones that do not require blocking views of the historical architecture and structures in the area. The Commission agrees the site is a gateway to the bayfront, and as such, it is critical that development on it consider and protect existing views.

Bulk, Scale, and Community Character

The proposed amendment would allow construction of a 20-foot high, 750 sq. ft., barn-shaped tower on top of the existing 20-foot high food mart/restaurant building, increasing the total building height to 40 feet. As noted, it would be identical to the tower that was proposed but not permitted under CDP No. 6-11-60. The tower would be entirely decorative signage, and would not have any usable internal floor area. The project is intended to make the existing gas station and associated commercial uses more visible, as the proposed tower would be the tallest structure in the vicinity, and could potentially be used as a surface for highly visible signage.

The subject site is located south of Palomar Street between Interstate 5 and the salt ponds in an area known as the Montgomery Area, a formerly unincorporated community of San Diego County that the City of Chula Vista annexed in 1985. The area was previously zoned in the County of San Diego as Limited Impact Industrial (M-52) and designated for Mixed-Use Commercial in the County LCP, which was approved by the Commission but never became effectively certified. The area is planned for mixed commercial uses in the City’s General Plan; however, the area has never been incorporated into the City’s LCP.

The area is currently characterized by a mix of commercial, residential, and industrial uses, with a number of vacant lots. According to the City, the neighborhood has changed over time due to the construction of I-5 from a predominately residential neighborhood with a few businesses, to a transitional area of mixed commercial, industrial, and older single-family residential uses. Most of the existing development in the area south of Palomar Street and west of I-5 is low-scale, one or two stories in height. Thus the pattern of development for the region is historically much less than 40 feet in height.

Just across the street, the area north of Palomar Street is within the City's permit jurisdiction and is covered by the Bayfront Master Plan LCP. The existing LCP allows for heights of up to 44 feet north of Palomar Street. However this area is mostly already developed with newer warehouse/retail buildings approximately 20 feet in height.

Through the amendment application process, the applicant has pointed to the "Grainger" building as evidence of a Commission-approved building in this area approved over 20-feet high (CDP No. 6-96-11). This building is located just north of Palomar Street, west of the subject site, and along the bayfront at 1150 Bay Boulevard. The existing Grainger building was approved by the Commission in 1996 with a height of 30 feet. However, the area north of Palomar Street is a traditionally industrial area that has historically included other large structures and industrial uses such as the South Bay power plant. In contrast, the subject area south of Palomar Street has been developed with mostly low-scale, one and two-story structures and is more sensitive to development because of its immediate adjacency to the Salt Works and salt mountains, as well as the bay.

Another distinction between the subject proposal and the Grainger building is that the additional height of the Grainger building was based on functionality of the permitted use, as the building is a large industrial warehouse with an interior mezzanine. As previously discussed, the proposed tower is a non-functional decorative sign element. The existing gas station can and is functioning without the proposed tower and freeway sign. As discussed in more detail below under **Signage**, the applicant has suggested that the business is not as successful as it could be without these elements, and thus, they are necessary for the functioning of the site. However, while every commercial business would like to enjoy the competitive advantage of having the highest, most prominent building in the area, allowing exceptions to the general pattern of development on a case-by-case basis is not consistent with maintaining the visual quality and compatibility of a community.

As the Commission noted in both its 2011 and 2015 findings, if it is the City's intention to allow exceptions to the general pattern of low-profile structures in this area for various architectural features, then it should develop land use plan policies for certification by the Commission that establish guidelines and parameters for view preservation, bulk and scale, and community character that describe when, where, and what variations from typical height requirements may be permitted. In the absence of these constraints and considerations, allowing a 40-foot high tower would set an adverse precedent for development in the region, and could prejudice the ability of the City to adopt a Land Use plan for the subject area.

The area south of Palomar Street appears to be ripe for redevelopment, with many older buildings and vacant lots. The subject site was one of the first sites to be redeveloped in many years, and the development on this site could establish the pattern for future redevelopment of the region. Thus, it is important to ensure that visual quality and community character are prioritized when considering new development. Given the prime location between I-5 and the bay, the existing bay views in the region, and the existing pattern of development, the Commission finds that the appropriate scale of development on the subject site and the surrounding area is lower-profile structures that preserve open sky and water views.

Signage

In addition to being one of the tallest structures in the area, the new tower would effectively function as a 40-foot high façade sign. Allowing non-functional design elements with commercial signage is contrary to the intent of the Commission's sign policies, which is to limit large signs in scenic coastal areas, particularly where they would block views of the bay (or in this case a historic structure associated with the bay). The Commission had and still has concerns that the "historical element" approach could be, and has been used in this case, to create "architectural features" that are essentially large billboards for commercial signage.

In addition to the new tower, the amendment would allow installation of a 45-foot high freestanding pole sign. While the existing building is visible from the freeway, it is not visible until past the Palomar Street north or southbound off-ramps. The applicant states that since the gas station opened on July 1, 2016, it has drawn considerably less business than anticipated because of the lack of visibility from the freeway and Palomar Street east of I-5. This lack of visibility has also prevented the applicant from attracting a restaurant tenant for the site. Therefore, the applicant contends that the pole sign and tower addition are necessary for the viability of the business to direct motorists to the subject site, and has provided visual simulations of the proposed freeway sign ([Exhibit 5](#)). These simulations indicate that the freestanding pole sign will be visible from the I-5 offramps (both north and south bound); however, they do not show how the sign would be visible from the area of the freeway before the offramp, which is necessary if a motorist is going to have time to exit the freeway. The pole sign would be visible from Palomar Street, east of the I-5, where additional gas stations currently exist. These simulations also demonstrate just how incompatible a tower sign and freestanding pole sign would be in this area.

However, the restrictions on signage were in place when the applicant undertook development. The Commission has traditionally restricted the size, number, and extent of commercial and industrial signage to avoid adverse visual impacts. Throughout San Diego County, including Chula Vista, most jurisdictions limit commercial signage in the Coastal Zone to only façade signs and monument signs less than 8 feet in height. As noted above, the subject site is not located within the area covered by the Bayfront Master Plan LCP, but the plan does apply to the area north of Palomar Street, immediately across the street to the north of the subject site. It would be inconsistent with the intent of the certified plan to limit signage to protect visual quality north of Palomar Street, but not south of it, particularly given the pattern of low-scale development in the

area. There are no similar freeway signs in the Coastal Zone in Chula Vista at this time, and allowing the subject sign to go forward would likely result in a request for others, both in and out of the Coastal Zone. For example, there is an existing gas station on the east side of the freeway, just north side of Palomar Street that does not have a freeway sign at this time; allowing a new freeway sign for the subject business could result in surrounding businesses requesting the same to remain competitive, resulting in the proliferation of freeway signs.

Furthermore, there are additional ways to attract motorists to the gas station without the construction of the tower addition or freestanding pole sign; visibility of the physical building is not the only way for motorists to find the gas station. Today, many motorists find businesses through the use of maps and other applications on their mobile devices or in their cars. In addition, the applicant has indicated that it may be possible to secure a Caltrans Specific Service (Business Logo) Sign along the freeway advertising the gas station. The applicant states that there is an approximate wait time of three years, which is unacceptable for the viability of the business.

In summary, the proposed amendment would result in a large, decorative tower sign and freestanding pole sign that is incompatible with the surrounding community character, would cause direct impacts to scenic resources, would be inconsistent with intent of the City's LCP in terms of signage, and would set an adverse precedent for the construction of freeway signs. Therefore, the Commission finds that the proposed project is not the consistent with the visual resource protection policies of the Coastal Act, and must be denied.

D. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

The subject site is located within the City of Chula Vista, which has a certified local Coastal Program. This site was previously within the County of San Diego's County Islands segment Local Coastal Program jurisdiction, but it is now within the boundaries of the City of Chula Vista as a result of the 1985 Montgomery Annexation, however, it has never been incorporated into the City's certified LCP. It is assumed that eventually the City's certified LCP will be amended to include this area. Until that time, Chapter 3 of the Coastal Act is the standard of review.

As described above, approval of the proposed amendment would be inconsistent with the Chapter 3 policies of the Coastal Act, as the proposed new tall structures would be incompatible with the character of the surrounding community, would not protect views or visual quality, and as such, could prejudice ability of the City of Chula Vista to complete a certifiable local coastal program. The alternative of keeping the existing gas station in its current form is feasible and would avoid these impacts. Therefore, the amendment must be denied.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit amendment, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Chula Vista found that the proposed amendment would be covered by the original project's Mitigated Negative Declaration from February 2011.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings in this staff report have discussed the relevant coastal resource issues with the proposal, and identify alternatives that avoid and/or lessen the adverse impacts to said resources. The Commission incorporates these findings as if set forth here in full. The proposed project may result in unmitigated adverse environmental impacts to public access and public recreation. Therefore, the Commission finds that the proposed project is not the least environmentally-damaging feasible alternative and is not consistent with the requirements of CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Chula Vista Certified LCP
- Coastal Development Permit No. 6-11-60
- Coastal Development Permit No. 6-15-0333