

CALIFORNIA COASTAL COMMISSION

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 Staff: T. Ross-SD
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 Hearing Date: 8/8/2019

**STAFF REPORT AND RECOMMENDATION ON APPEAL
 SUBSTANTIAL ISSUE DETERMINATION**

Local Government: City of San Diego

Decision: Approved with Conditions

Appeal Number: A-6-TJN-19-0038

Applicant: Baja Mexican Insurance Services

Location: 4575 Camino de la Plaza, Tijuana River Valley, San Diego,
 San Diego County (APN No. 666-400-10)

Project Description: Revise existing Coastal Development Permit authorizing
 construction of Las Americas Outlets to delete portion of site
 that is not within the coastal zone

Appellants: Shamrock/Outlets at the Border LLC

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 3 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. 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 it will take public testimony.

Staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed.

The subject site is a 31,363 sq. ft. parcel containing a stand-alone building housing an insurance business with surface parking, located within the Las Americas Outlets mall development. The City of San Diego has approved a Coastal Development Permit (CDP), and Site Development Permit to allow for construction of six-level, 13, 210 sq. ft. building. The first floor would be used for commercial/retail development, and the top five floors would provide a 349 space parking garage. The appellant raises several Local Coastal Program (LCP) consistency concerns, including traffic, public access, and community character.

However, the development before the Commission is solely the unencumbering of the site from the requirements of a previously issued CDP issued by the City. The original City CDP covered the construction of the entire 58-acre mall, a portion of which is within the Coastal Zone, and a portion of which, including the subject site, is outside the Coastal Zone. The subject CDP essentially amends the original CDP by removing all of the original CDP requirements from the subject parcel, as the site is located completely outside the coastal zone. Thus, none of the LCP issues raised by the appellant are applicable, as the policies of the City's LCP do not apply outside of the Coastal Zone. Additionally, the site is located approximately 4 miles inland of the shoreline, and there are no coastal resources on the site that could be impacted by development on the site.

Because the property is located entirely out of the coastal zone, the Coastal Commission does not have jurisdiction to review development of the site. Therefore, staff recommends that the Commission determine that the project raises no substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of San Diego Local Coastal Program.

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[Exhibit 2 – Aerial of the Site](#)

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[Exhibit 4 – Appeal forms and attachments](#)

I. APPELLANTS CONTEND

The project as approved by the City does not conform to the City of San Diego's certified Local Coastal Program (LCP), with regard to traffic, public access, and community character. Specifically, the appellants contend that construction of the new building that is the subject of the City's site development permit does not conform to the policies of the certified LCP with regard to traffic impacts that will create pedestrian safety concerns; a design that includes a number of deviations from the original development and the LCP's design guidelines; and, that the project fails to maintain the requirements of the prior CDP regarding design, traffic and landscaping.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the Planning Commission on October 25, 2018. The permit included that the Coastal Development Permit (CDP) was included for the sole purpose of unencumbering the site from the requirements of a previously issued CDP and the proposed development was not a part of the review. The approval of the development including the CDP was appealed by the subject appellants on November 8, 2018. The City Council denied the appeal and upheld the Planning Commission's decision on May 14, 2019. A Notice of Final Action was received by the Coastal Commission on May 24, 2019.

As a result of the approved permit, the footprint of the proposed development lies entirely outside the coastal zone. In 2005, the California Supreme Court affirmed that the Commission has no jurisdiction outside the coastal zone, even where impacts outside the zone may impact coastal resources inside the zone. (*Sierra Club v. California Coastal Commission* ((2005) 35 Cal.4th 839.) The court interpreted Section 30604(d) of the Coastal Act on the basis of its plain language:

No development or any portion thereof which is outside the coastal zone shall be subject to the coastal development permit requirements of this division, nor shall anything in this division authorize the denial of a coastal development permit by the commission on the grounds the proposed development within the coastal zone will have an adverse environmental effect outside the coastal zone.

Therefore, the Commission lacks jurisdiction to consider the project on a de novo basis, which necessarily follows a finding of substantial issue. Nevertheless, the Commission provides analysis of the appellants' contentions below.

III. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission would ordinarily proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission would ordinarily proceed to a full public hearing on the merits of the project then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public

recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs., tit. 14, § 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of San Diego has a certified Local Coastal Program (LCP), and the subject site was included in a permit issued by the City of San Diego in 2000 that covered development of a large project where portions of the project were within the Commission retained appeal jurisdiction. However, the subject parcel is not located within the Commission's retained appeals jurisdiction, and the only development before the Commission at this time is the removal of the site from the requirements of the previous City Coastal Development Permit. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-TJN-19-0038 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION: *The Commission hereby finds that Appeal No. A-6-TJN-19-0038 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION/SITE HISTORY

The subject site is a 31,363 sq. ft. parcel containing a stand-alone building housing an insurance business with surface parking, located within the Las Americas Outlets mall development. Portions of the mall are located within the San Ysidro Community Plan area of the certified City of San Diego LCP, and portions of the mall, including the subject site, are located outside of the Coastal Zone (ref. Exhibit 3).

The development before the Commission on appeal consists only of the removal of the subject site from the requirements of a previously approved, City of San Diego Coastal Development Permit (ref. San Diego CDP No. 40-0338). CDP No. 40-0338 was issued in late 2000 and authorized the construction of the *International Gateway of the Americas* (Las Americas Outlets) development which included over 650,000 sq. ft. of commercial/retail space, parking, signage, and landscaping on a 57.67-acre site just north of the International Border (ref. Exhibit No. 1). Development of the mall involved multiple parcels and a tentative parcel map, all of which were covered by the City's CDP, even though the development included distinct parcels that were located wholly outside of the coastal zone, including the subject parcel. The permit allowed for the construction of the 2,000 sq. ft. insurance building with surface parking on the subject parcel. The Commission received a Notice of Final Action for the proposed development in December 2000, and the development was not appealed (ref. FLAN No.6-TJN-00-279/International Gateway of the Americas).

In 2002-2003, the 2,000 sq. ft. insurance building was demolished and redeveloped with a new, 2,400 sq. ft. structure providing the same commercial use (ref. Exhibit No. 2). The

property owner is now proposing to again redevelop the site by demolishing the existing building and constructing a 6-level, 13, 210 sq. ft. building with the first floor being used for commercial/retail development, and the top five floors providing a 349 space parking garage.

While the development proposed is located outside the coastal zone and thus does not need to be authorized through the issuance of a CDP, the City issued a new CDP (ref. CDP No. 1325596) which effectively amends the previously issued CDP (ref. CDP No. 40-0338) to unencumber the subject site from the requirements of CDP. The removal of the site from the underlying permit is the only development before the Commission at this time. Because the proposed development is not within the coastal zone boundaries it is not subject to the requirements of the Local Coastal Program and is not within the Coastal Commission's jurisdiction.

B. PUBLIC ACCESS

The City of San Diego, San Ysidro Community Plan contains a number of provisions included in the appellant's contentions which include:

Policy 2.3.4 States:

Support the outlet centers as tourist-oriented commercial uses and encourage rehabilitation of older structures and maintenance of existing structures (also see section 4.4).

Mobility Goal

Pedestrian-friendly facilities throughout the community with emphasis on the San Ysidro Historic Village and Border Village areas in order to minimize or reduce pedestrian/vehicular conflicts.

Mobility Policy 3.2.1

Support and promote walkability and connectivity through the construction of sidewalk and intersection improvements throughout the community at, but not limited to, the following locations:

[...]

1. Camino de la Plaza

Mobility Policy 3.2.4

Improve the pedestrian environment adjacent to transit stops and schools, through the installation and maintenance of signs, lighting, high-visibility crosswalks, and other appropriate traffic calming measures (see also Policy 3.4.1).

Mobility Policy 3.3.4

Increase level of comfort and safety for bicycling as well as accessibility for all level of bicycle riders with improvements such as wayfinding and markings, actuated signal timing, bicycle parking, wider bike lanes, and protected bicycle facilities.

Mobility Policy 3.4.8

Coordinate with MTS and SANDAG to reduce trolley, vehicle, and pedestrian conflicts. Strategies may include elevated tracks and platforms, rail realignment, and aesthetic improvements to strengthen pedestrian access and walkability.

Mobility Policy 3.5.3

Introduce traffic calming measures, along Willow Road and other appropriate locations, to improve pedestrian and cyclist safety and comfort, and to reduce speeding and traffic diversion from arterial streets onto residential streets and alleyways.

The appellants contend that the proposed construction of a new commercial/retail building and parking garage is inconsistent with a number of LCP policies regarding traffic and access because the City failed to adequately analyze traffic impacts on the intersections surrounding the proposed development. Specifically, the appellants contend that the development will have traffic impacts on Camino de la Plaza and southbound I-5, Camino de la Place and San Ysidro Boulevard and San Ysidro Boulevard and Northbound I-5 intersections (ref. Exhibit No. 1, 2).

In addition, the appellants contend that the development will result in public safety concerns for pedestrians using the sidewalks bordering the project site. As proposed, a new left turn lane will be installed on Camino de la Plaza in order to gain access to the site. The appellants contend that because those turning will have to navigate through one eastbound turn lane, two east bound through lanes, a bike lane and a sidewalk, it is possible that pedestrians on the sidewalk might not be adequately protected. The appellants submitted a traffic report that indicates the sidewalk at this location is used by between 208 and 364 pedestrians daily. The appellants contend that the number of obstacles a driver must navigate to enter the site poses safety concerns for the pedestrians and could potentially result in the backup from the turn lane into the main lanes of traffic on Camino de la Plaza.

However, the development before the Commission at this time is the CDP issued by the City to remove the subject site from a previously approved CDP. The site is not within the Coastal Zone, and the specific development and any associated traffic and safety concerns are not subject to the requirements of the LCP or the Coastal Act. Additionally, the subject site is located well inland of the shoreline and there is no potential for coastal resource impacts with regard to the public's ability to access the coast. Thus, the project

is not within the Coastal Commission's jurisdiction and the appeal does not raise a substantial issue with regard to conformity with the certified LCP.

C. COMMUNITY CHARACTER

The City of San Diego, San Ysidro Community Plan contains a number of provisions included in the appellant's contentions which include:

Urban Design Policy 4.2.3

Tailor building height and scale to be sensitive to surrounding residential and commercial uses.

Urban Design Policy 4.2.10

Strengthen neighborhood identity and connectivity with pedestrian promenades, wayfinding, and gateway features (see also section 4.11)

Urban Design Policy 4.3.2

Promote enhancements to commercial areas include façade improvements, enriched streetscapes and landscaping, unified signage programs, improved pedestrian access, and infill pad development (also see Policy 4.5.3)

Urban Design Policy 4.3.8

Encourage infill projects and promote compatibility with the surrounding context in terms of building scale, compactness of development, and design character and articulation.

Urban Design Policy 4.3.20

Enhance landscaping, promote pedestrian activities and amenities, and provide safe and adequate lighting for commercial developments.

Urban Design Policy 4.3.22

Provide guidelines to promote consistent architectural theming for commercial centers, utilizing complementary materials, colors, lighting, and massing.

Urban Design Policy 4.3.23

Encourage articulation and variation in massing to minimize building scale and provide an enhanced pedestrian orientation on buildings with large frontages and expansive façades.

Urban Design Policy 4.3.29

For development on corner lots, extend street landscaping treatments onto the side street.

Urban Design Policy 4.11.10

Consider opportunities for additional secondary gateway signs at the following locations:

[...]

f. At the intersection of Camino De La Plaza and Virginia Avenue in the Port of Entry District...

The appellants have cited the above referenced LCP policies and contend that the City's CDP will facilitate a large, bulky structure, with minimal landscaping and additional signage that is not compatible with the character of the surrounding community. The specific contentions raised by the appellant include that the number of deviations in the approval, including increased height, reduced setbacks and increase signage size, will allow a monolithic structure that is larger than what is envisioned for the area by the LCP. The project also fails to include design improvements such as promenades, façade improvements, wayfinding signage, or an enriched streetscape into the project design and that the development will block existing views of the border.

However, as previously stated, the site is not located in the coastal zone, and the development and potential community character concerns are not subject to the requirements of the LCP. Additionally, the subject site is located well inland of the shoreline and in a highly developed portion of the City. As such, there is no potential for coastal resource impacts with regard to community character. Additionally, even if significant coastal resource impacts did exist, the Commission does not have jurisdiction over the development and cannot require the project to be revised or any potential impacts to be mitigated. Therefore, the appeal does not raise a substantial issue.

D. CONDITIONS OF PRIOR CDP

The appellants contend that the removal of the project site from the requirements of CDP No. 40-0338 fails to consider the conditions and requirements included in that CDP to ensure compliance and consistency with the LCP. Specifically, the appellants contend that the conditions pertaining to design, traffic and landscaping were not carried over to the newly proposed development. Conditions regarding design, traffic and landscaping were included in the original approval only because portions of the proposed development site were located within the coastal zone and those conditions were implemented when the subject site was redeveloped in 2002. No portion of the subject parcel is within the boundaries of the coastal zone. Therefore, development proposed on

the site is not subject to the requirements of the City's LCP, and the Commission does not have jurisdiction over the proposed development.

E. SUBSTANTIAL ISSUE FACTORS

As discussed above, there is adequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP, as the subject site is located outside the coastal zone and is; therefore, not subject to the requirements of the LCP. Generally speaking, the Commission considers five specific findings when considering whether a project raises a "substantial issue." These factors are listed on Page 7 of this staff report and none of the factors support a finding of substantial issue. Each factor is briefly discussed below.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP. The development before the Commission includes only the removal of the site from a previously approved CDP. Since approval of the previously issued CDP, the site has been subdivided and is now located entirely outside the coastal zone. Because the site is no longer located in the coastal zone, the development is not subject to the requirements of the LCP. Additionally, because the development proposed is located entirely outside the coastal zone, the extent and scope of the development is not applicable. The subject site is located well inland of the shoreline and there is no potential for significant coastal resource impacts. Even if there were potential coastal resource impacts, the site is not within the Commission's jurisdiction and the Commission could not require the project to be revised or any potential impacts to be mitigated. Because the site is not subject to the requirements of the LCP, the City's approval will not have any precedential implications of future interpretations of the LCP. Finally, because the project includes releasing the site from the requirements of a previously issued CDP, and the proposed development is located outside the coastal zone, the issues raised by the appellants will not raise any regional or statewide concerns.

In conclusion, removing the subject site from the requirements of a previously issued CDP does not raise a substantial issue because the development is located outside the coastal zone and beyond the Coastal Commission's jurisdiction. The specific issues raised by the appellants are related to the development itself and are not a proper basis for appeal. The Commission therefore finds that the City's action does not raise any substantial issue with regard to conformity with the LCP.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS:

- Appeal by Shamrock/Outlets at the Boarder LLC dated June 10, 2019;
- City of San Diego CDP No. 40-0338;
- San Ysdiro Community Plan and Local Coastal Program Land Use Plan dated October, 2017;
- City of San Diego FLAN No. 6-TJN-00-279
- Worden Williams LLP Comment Letter Dated June 18, 2019