

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



F18b

Filed: 11/19/20
49th Day: WAIVED
Staff: TR-SD
Staff Report: 3/25/21
Hearing Date: 4/16/21

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of Oceanside

Decision: Approved with Conditions

Appeal Number: A-6-OCN-20-0066

Applicant: Paul Sarkaria

Location: 2102 South Nevada Street, Oceanside, San Diego County (APN 155-130-42)

Project Description: Subdivision of a 1.17-acre lagoon-fronting lot into two residential parcels (Parcel A & Parcel B). Parcel A will consist of 23,780 sq. ft. and Parcel B will consist of 27,000 sq. ft. No construction or physical development of the parcels is proposed at this time.

Appellants: Commissioners Padilla and Brownsey

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.

SUMMARY OF STAFF RECOMMENDATION

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 proposed project includes subdivision of a 1.17-acre lagoon-fronting lot into two residential parcels (Parcel A & Parcel B). Parcel A will consist of 23,780 sq. ft. and is currently developed with a single-family home. Parcel B will consist of 27,000 sq. ft. and is currently undeveloped. No physical development of the new parcels and no removal of existing structures is proposed, however, the City's approval identified potential building envelopes on each parcel based on setback requirements.

The appellants contend that the project did not adequately evaluate and protect sensitive habitat on site. The project is located immediately adjacent to Buena Vista Lagoon. The biological report confirmed the presence of wetland vegetation on the southernmost portion site but did not include a formal wetland delineation to determine the extent of wetlands. Without a delineation, adequate protection and buffering cannot be ensured, and both are required by the LCP. The biological report identified three individual Island Mallow plants, which are considered rare and seriously threatened by the California Department of Fish and Wildlife. The City's approval failed to protect this sensitive coastal habitat, inconsistent with the City's LCP. In addition, the appellants contend that the project is not consistent with the public access and recreation policies of the LCP and Chapter 3 of the Coastal Act because the City failed to review or require public access improvements on the site. Finally, the appellants contend that the building envelope identified by the City could adversely impact views of Buena Vista Lagoon available from the southern terminus of from Hayes Street, inconsistent with the LCP.

To resolve the concerns raised regarding protection of sensitive habitat, the applicant provided a wetland delineation, the language of an existing conservation easement that prohibits development within the southern portion of the site, a biological memorandum comparing the habitat protection that would be achieved by application of a 100-foot wetland buffer against adherence with the existing conservation easement, as well as a plan for the protection of the rare Island Mallow plants identified on the subject site.

Commission staff has reviewed the provided documents and determined that the wetland delineation identifies the location of the wetlands present on site, and confirms the sensitive resources are adequately separated from the identified building envelopes. Therefore, staff has determined that the site can accommodate the two proposed residential lots with adequate building area, and simultaneously protect the sensitive wetland and riparian habitat present on site. Commission staff also agrees that the existing conservation easement includes all sensitive habitat, will prevent development within the most sensitive portions of the site, and will provide an adequate buffer from future development on the properties. The Commission's ecologist has also reviewed

the delineation, the buffer memo, and the Island Mallow plan and supports the findings and recommendations included in the provided information.

Regarding public access, while requiring a trail through the site would be consistent with the requirements of the LCP, no construction or other physical development is currently proposed. Without a specific proposal, the best location for public access improvements cannot be determined at this time. Instead, the appropriate alignment of a trail should be evaluated and identified as a part of any future specific development proposal when full geotechnical, biological, access and design information is provided.

Finally, staff has determined that the portions of the site that provide the views to the lagoon are located within areas protected by the conservation easement. Projected development of the site will not impact the existing coastal views.

Because there are no remaining identified inconsistencies with the LCP and the Coastal Act, 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 Oceanside Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act

TABLE OF CONTENTS

I. APPELLANTS CONTEND	5
II. LOCAL GOVERNMENT ACTION	5
III. APPEAL PROCEDURES	5
IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION	7
V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION	7
A. Project Description and Background	7
B. Biological Resources	8
C. Public Access and Recreation	12
D. Public Views	14
E. Substantial Issue Factors	15
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	16

EXHIBITS

- [Exhibit 1 – Project Location](#)
- [Exhibit 2 – Aerial of Site](#)
- [Exhibit 3 – Subdivision Plan](#)
- [Exhibit 4 – Vegetation Map](#)
- [Exhibit 5 – 100-foot buffer vs. Conservation Easement](#)
- [Exhibit 6 – View from Horne Street](#)
- [Exhibit 7 – Existing Public Access Trail](#)
- [Exhibit 8 – Appeal Forms](#)
- [Exhibit 9 – City Staff Report](#)

I. APPELLANTS CONTEND

The appellants contend the building envelopes identified by the subdivision do not conform to the City of Oceanside's certified Local Coastal Program (LCP), with regard to protection of sensitive habitat present on the site. These concerns are exacerbated given the potential for changes in habitat location and type over time associated with climate change and the future restoration of Buena Vista Lagoon. The appellants further contend that the building envelope identified by the City could adversely impact views of Buena Vista Lagoon available from the southern terminus of from Hayes Street, inconsistent with the LCP. Finally, the appellants contend that the City's approval is inconsistent with the public access and recreation policies of the City's LCP and the Coastal Act because it failed to review or require public access improvements on a site that should provide an important expansion for an existing public access trail located along the north side of the lagoon.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the Planning Commission on October 26, 2020. Conditions of approval included that all mitigation measures identified in the adopted Mitigated Negative Declaration shall be implemented prior to the subdivision and that any future development of the site(s) shall be subject to the land use policies and development standards in effect at that time.

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 will 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 will 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 Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (Pub. Resources Code, § 30625(b)(2)). Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

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.

The Commission may, but need not, assign a particular weight to a factor.

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 Oceanside has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. 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

Motion:

I move that the Commission determine that Appeal No. A-6-OCN-20-0066 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

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-OCN-20-0066 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.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The proposed project includes subdivision of a 1.17-acre lagoon-fronting lot into two residential parcels (Parcel A & Parcel B). Parcel A will consist of 23,780 sq. ft. and is

currently developed with a single-family home. Parcel B will consist of 27,000 sq. ft. and is currently undeveloped.

The project site is bordered to the south by Buena Vista Lagoon, to the west by two previously subdivided, maintained vacant parcels and other residential development, to the north by residential development between South Horne and South Nevada streets, and to the east by the South Horne Street terminus, the slope of Buena Vista Lagoon and the Lagoon itself (ref. [Exhibit No. 2](#)). Aside from the subdivision, no physical development of the new parcels and no removal of existing structures is proposed as part of this project.

While no development of the parcels is proposed at this time, the City's staff report identifies a potential building envelope based on existing easements and setback requirements. Parcel A is identified as having a 10,390 sq. ft. developable area and Parcel B is identified as having 8,872 sq. ft. of developable area. The existing conservation easement on the site was previously required by the City of Oceanside to protect the resources present onsite and is not modified by the City's approval of this subdivision (ref. [Exhibit No. 3](#)).

B. Biological Resources

The City's LCP requires that adequate buffers be provided as required by the following provisions:

I. Costal Access.

Policy 5. The City, in conjunction with the State Department of Fish and Game [Fish and Wildlife], shall continue its efforts to provide and maintain an adequate buffer zone between Buena Vista Lagoon and development along its shore. Such a buffer is necessary for the provision of public access and protection of the lagoon from adverse environmental impacts.

The buffer zone shall be generally 100 feet in width as measured from the landward edge of the lagoon or existing riparian vegetation, whichever is more extensive. Within the buffer zone, only passive recreation uses (such as walking, nature study, photography, small resource interpretive facilities and viewing areas) shall be allowed with no structures other than permitted by this policy and only very minor alteration of natural land forms or conditions for used permitted by this policy.

V. Environmentally Sensitive Habitat Areas

Policy 2. Prior to approving any development on dry lands adjacent to Buena Vista Lagoon, the City shall consult the State Department of Fish and Game [Fish and Wildlife] to ensure that adequate measures are provided to protect and enhance the lagoon's sensitive resources. Such measures shall include, where appropriate:

- a. Provision of adequate buffers between development and the lagoon.

The appellants contend that the project fails to provide adequate protection or buffers to the sensitive habitat present onsite, inconsistent with the City's LCP. The subject site is located on the northern side of Buena Vista Lagoon and the property extends into lagoon waters (ref. [Exhibit No. 2](#)).

Sensitive habitat on the site consists of Island Mallow on the flat portion of the site, Arrowweed scrub patches on the slope down to the lagoon, southern willow scrub and Arrowweed scrub at the edge of the lagoon, and freshwater marsh within the Lagoon waters (Exhibit 4). Arrowweed scrub is a wetland-associated plant that is native to southern California. Three individuals of Island Mallow (*Lavatera assurgentiflora* ssp. *assurgentiflora*), occur within the flat, maintained portion of the site and are assumed to be holdovers from prior landscaping. Most of the remaining plants identified onsite are non-native. At the time the biological survey was conducted, federal- and state-listed endangered Light-footed Ridgway's Rail (*Rallus obsoletus levipes*) was heard calling from the freshwater marsh in the southern portion of the project parcel.

The City's approval included subdivision of the lot and informally identified the potential building envelope for each parcel (ref. [Exhibit No. 3](#)). The appellants contend that 1) without completion of a formal wetland delineation, the extent of wetlands cannot be adequately determined, and it is unclear whether the existing wetlands onsite have been adequately protected, and that 2) the City's approval fails to identify an appropriate biological buffer from the sensitive habitat located on the subject site. While no physical development is proposed at this time, the City's approval establishes a potential building envelope located within 50-feet of the habitat present on the site, inconsistent with the policies of the City's LCP.

To address these concerns, the applicant submitted a revised biological report, including a Coastal Act-standard wetland delineation. The report concluded that the willow and Arrowweed scrub patch at the Lagoon edge, along with the marsh vegetation in the Lagoon, meet the Coastal Act definition of wetlands, and need to be buffered from any future development in compliance with the LCP. The delineation also concluded that the Arrowweed scrub patch located in the sloping portion of the site did not meet the criteria for wetland vegetation. The Commission's staff ecologist has reviewed the provided delineation and agrees with the conclusions. Although Arrowweed (*Pluchea sericea*) is the dominant species in this location and is frequently found in wetlands, it also occurs in non-wetlands. In this location, the wetland delineation did not find a preponderance of hydrophytic vegetation. Nor did it find hydric soils or wetland hydrology. In addition, the topography of this landscape feature along a slope would make wetland existence in this location unlikely, as would the proximity to coastal prickly pear (*Opuntia littoralis*), which lies adjacent and amidst the Arrowweed scrub community.

Therefore, based on the findings of the wetland delineation, the building envelopes established by the City are not located on the portions of the site that contain sensitive wetland or riparian vegetation, consistent with the LCP. The Commission finds that the appeal does not raise a substantial issue regarding the development of wetlands.

Biological Buffer

The City's LCP requires that development located adjacent to Buena Vista Lagoon provide a 100-foot buffer from the lagoon or existing riparian vegetation, whichever is more extensive. Based on the applicant's updated biological report and wetland delineation, the building envelopes identified by the City are located well outside of the required 100-foot buffer, with the exception of the southwestern corner of the Parcel A building envelope (ref. [Exhibit No. 5](#)).

The City's approval indicated that the habitat present onsite would be adequately protected by a previously recorded conservation easement that restricts development on the southern portion of the subject site.

The appellants contend that the project is inconsistent with this requirement because: 1) the extent of sensitive habitat was not fully reviewed, 2) the restrictions included in the conservation easement were not provided, and 3) the location of the buffer is critical given the potential changes in habitat associated with climate change and the future restoration of Buena Vista Lagoon.

The existing conservation easement was provided by the City, and after Commission review it was determined that the easement does not exactly mirror the 100-foot buffer determined by the biological report (ref. [Exhibit No. 6](#)). Instead, the conservation easement follows the curve of the existing slope, protecting the majority, but not all, of the 100-foot buffer area. The applicant submitted an analysis by a qualified biologist comparing the area preserved through strict application of the 100-foot buffer and the habitat protected through application of the existing conservation easement:

In terms of areas, the two alternatives presented here, the top-of-slope existing easement buffer and the wetlands 100-foot buffer protect the same amount of habitat between the buffer edge and the wetland – 0.41 acres. The existing easement buffer would protect higher quality habitat, effectively separate currently developed and maintained landscaping with little wildlife value from native habitat, and provides an aesthetically pleasing break in the landscape at a natural point, all while protecting at least the same amount of total area as a strictly 100-foot buffer.

The Commission's ecologist has reviewed both the area protected by the 100-foot buffer and the limits of the conservation easement and agrees with the above conclusions. Specifically, that the most sensitive portions of the site are better protected by the conservation easement than the standard 100-foot buffer. Additionally, while the Arrowweed scrub located on the slope does not qualify as wetlands, it is still native habitat that should be buffered. The location of the conservation easement provides a better biological buffer for the stand of located on the slope than would be provided by the 100-foot buffer. Finally, the appellants contend that the location of the buffer is critically important given the potential changes in habitat associated with climate change and the future restoration of Buena Vista Lagoon. The existing conservation easement follows the topography of the site. This not only provides better protection for the bluff itself, but also provides better protection for the portions of the site most suitable for

expanded wetland and riparian vegetation should the lagoon edge and line of wetlands encroach further into the subject site in the future.

In conclusion, application of the existing conservation easement instead of strict adherence to the 100-foot buffer described by the LCP provides better habitat protection on the site. The Commission finds that the appeal does not raise a substantial issue regarding the proposed development's consistency with the sensitive coastal resource protection policies of the certified LCP.

Island Mallow

The biological report provided by the applicant noted the presence of three individual Island Mallow plants located within the upland portion of the site. Island mallow (*Malva assurgentiflora ssp. assurgentiflora*) is native to the Channel Islands and is rated by the California Department of Fish and Wildlife as Rare Plant Rank 1B.1. The 1B designation means that the plant is rare, threatened or endangered in California and elsewhere. The point-one (.1) indicates it is seriously threatened. The current status of the Island Mallow in its native setting on the Channel Islands is critically imperiled, as goats eat the shrub and only tens of historically natural individuals remain. However, Island Mallow has simultaneously been cultivated across coastal California in developed areas for over 150 years.

Thus, the report clarifies that the location of these plants on the subject site is not a native setting. Instead the plants are likely originated from cultivation and are likely more than a century removed from the native habitat of the Channel Islands.

The Commission's ecologist reviewed the provided information and has determined that because the Island Mallow is not native to this location, it does not meet the definition of ESHA. However, given the ranking of the plant as rare, the three individuals onsite should be protected.

Presently, the plants are located within the area identified as developable and not within the area protected by the existing conservation easement. Thus, future development of the site could eliminate the plants, inconsistent with the requirements of the LCP. Therefore, the Commission's ecologist recommended relocation of the three plants prior to development of the site. The applicant submitted a biological memo that reviewed options for protecting the plants and included the following:

If the stand of plants within the parcel are threatened with development, we recommend that seeds of the plant are dispersed in the conservation easement on the slope towards Buena Vista Lagoon. Island mallow produces a copious number of seeds each year, and propagation of the plant by seed is fairly easy... If the plant can germinate in the non-native grassland on the slope and become established, it would improve the habitat there. Island mallow can grow about six feet in its first full year and produces new seed in the first year or two.

The Commission's ecologist has reviewed the memo and agrees that propagation through seed dispersal is an acceptable alternative to relocating the three existing plants. However, as no development is currently proposed and the plants are not currently threatened, requiring seeding within the easement area is not warranted at this time. Instead, protection of the Island Mallow plants must be addressed through any future Coastal Development Permit review process and should incorporate the recommendations provided by the applicant's biologist. Absent this protection, future development of the site will not be consistent with the sensitive habitat protection policies of the City's LCP.

In conclusion, while the proposed project does not include building development, future development of the new vacant parcel and redevelopment of the existing residence is likely, and all future development must be located within the appropriate portions of the project site. As approved by the City, the riparian and wetlands at the lagoon are adequately protected and buffered by the existing conservation easement, consistent with the requirements of the LCP and therefore, this proposal does not raise a substantial issue.

C. Public Access and Recreation

The City's LCP includes the following public access requirements:

I. Coastal Access. Policy

5. The City, in conjunction with the State Department of Fish and Game [Fish and Wildlife], shall continue its efforts to provide and maintain an adequate buffer zone between Buena Vista Lagoon and development along its shore. Such a buffer is necessary for the provision of public access and protection of the lagoon from adverse environmental impacts.

V. Environmentally Sensitive Habitat Areas

Policy 2. Prior to approving any development on dry lands adjacent to Buena Vista Lagoon, the City shall consult the State Department of Fish and Game [Fish and Wildlife] to ensure that adequate measures are provided to protect and enhance the lagoon's sensitive resources. Such measures shall include, where appropriate:

[...]

d. Construction of information signs/kiosks educating the public on the value of the lagoon, and listing the regulations for public use.

In addition, because the site is located between the lagoon and the adjacent road, the public access and recreation policies of the Coastal Act apply and state in part:

Section 30210

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.

Section 30211

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.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

The appellants contend that the City's approval failed to evaluate potential for public access on a site fronting Buena Vista Lagoon. The City's LCP calls for public access to be considered and potentially located within any required biological buffer for properties located adjacent to Buena Vista Lagoon. Additionally, the public access and recreation policies of Chapter 3 of the Coastal Act further require provision of public access to and along the shoreline.

The site is located immediately north of Buena Vista Lagoon and between two street-ends (ref. [Exhibit No. 2](#)). There is currently no public access available on this site, and access is generally limited along this section of the lagoon shoreline. However, there is an existing public shoreline trail located one block west of the subject site and within the Buena Vista Audubon Society property. This trail continues west of Coast Highway to the existing Railway Corridor (ref. [Exhibit No. 7](#)). Thus, there is potential to improve this site with a public access pathway that could eventually connect with the existing public trail.

However, the project being reviewed at this time consists of subdivision of the existing single lot into two separate residentially zoned lots. No building development is proposed at this time; and, because of this, a number of the technical documents that would be necessary to comprehensively evaluate public access opportunities have not been completed, including full geotechnical evaluation of the site, necessary street and site access improvements, specific development envelopes, etc. As previously discussed, the site includes a steep slope as well as sensitive habitat and wildlife species located between the developable portion of the site and the lagoon-edge. Thus, the constraints of the site, which will ultimately determine the appropriate location of a public access trail, have not yet been adequately reviewed and it is not feasible to determine where a public trail should be located at this time.

Instead, public access improvements should be evaluated through the Coastal Development Permit process associated with any specific future development proposal. At that time, based on a geotechnical report, updated biological analysis, along with the location of necessary access improvements and building envelope, the City should determine the proper location for a public access trail. Additionally, the City-held conservation easement on the site prohibits development of any kind and would preclude construction of a public access trail. As such, the easement may need to be amended to allow construction of the trail and permanent public access, consistent with the requirements of the LCP. Absent this analysis, potential trail alignment, and revised easement language, future development of the site will not be consistent with the requirements of the City's LCP and the applicable provisions of the Coastal Act.

Because siting and development of public access improvements would be better addressed associated with a specific building development proposal, the concerns regarding public access raised by the appellants do not raise a substantial issue at this time.

D. Public Views

The City's LCP includes the following provisions related to protection of visual resources:

VI. Visual Resources and Special Communities.

Policy 1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.

Policy 4. The City shall maintain existing view corridors through public rights-of-way.

The appellants contend that the development envelope identified by the City's approval may result in development that will obstruct public views of Buena Vista Lagoon. The subject site is located at the southern terminus of Horne Street and directly north of Buena Vista Lagoon (ref. [Exhibit No. 2](#)). The site consists of a flat-top area that contains some landscaping, followed by a steep slope, and ends at the edge of the Lagoon. When standing at the end of Hayes Street, views of the lagoon are available through the sloping and lagoon portions of the site (ref. [Exhibit No. 6](#)).

The development approved by the City consists only of subdivision of a single residentially designated lot into two residentially designated lots. No demolition or construction of any structures is being proposed at this time. However, the subdivision will ultimately facilitate new development that may be located within the portion of the site providing the existing lagoon views.

As a part of the appeal process, the City provided the language of an existing conservation easement which restricts development of the bluff and lagoon portions of the site. As shown on Exhibit No. 6, and based on the requirements of the easement, development will be limited to the flat-top portion of the site, and the portions of the site

that contain the existing public views will not be developed (ref. [Exhibit No. 6](#)). It is important to note again that no building development of either site is proposed at this time. Any development or redevelopment of the sites will require issuance of a Coastal Development Permit. At that time, the City should assure any proposed development will not obstruct the views of Buena Vista Lagoon present from Hayes Street through the subject including proposed landscaping, fencing, back yard improvements, etc., consistent with the requirements of the City's LCP.

In conclusion, given the location of existing public views and the protection afforded by the City's conservation easement, future development of the site is not likely to obstruct any public views of the lagoon and the contentions raised regarding protection of public views do not raise a substantiation issue at this time.

E. Substantial Issue Factors

As discussed above, on review by staff of additional information provided by the applicant, there is factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The objections to the project suggested by the appellant do not raise any substantial issues of regional or statewide significance.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Oceanside Local Coastal Program
- City Coastal Development Permit RC18-00019
- Updated Biological Report draft by Tierra Data Inc., and dated December 10, 2020
- Biological Memorandum, “Rare island mallow 2102 S. Nevada Street, Oceanside, CA”, dated February 25, 2021
- Biological Memorandum, “Coastal Access Buffer Zone”, dated February 25, 2021
- Conservation Easement No. 2002-0774474