

CALIFORNIA COASTAL COMMISSION

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F10a

ADDENDUM

April 6, 2022

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item F10a**, Coastal Commission Permit Application **No. A-6-NOC-22-0008 (Oliver)**, for the Commission Meeting of April 8, 2022

The purpose of this addendum is to make a correction and to respond to comments from the applicant's agent received after publication of the staff report. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~striketrough~~ and additions shall be underlined:

1. On Page 7 of the staff report, the first paragraph of the Project Description and Background section shall be revised to correct the description of the site history as follows:

The project is the subdivision of a 9.89-acre site into two Parcels (Parcel One 3.2-acres and Parcel Two 6.7-acres) and construction of a 77,652 sq. ft. seven-story, 128-room hotel, a 96,040 sq. ft. five-story office building including a 4,815 sq. ft. restaurant and accessory uses on Parcel One. ~~While~~The site is currently vacant,~~the site was previously developed with a restaurant and at-grade parking.~~ Parcel Two is currently developed with an office building and parking structure and there is no additional construction approved on this portion of the site (ref. Exhibit Nos. 4, 5).

2. On Page 9 of the staff report, after the fourth paragraph from the top, the following shall be inserted:

After the staff report was published, the applicant's attorney submitted a letter in response to the staff report (ref [Exhibit No. 7](#)). The letter asserts three primary issues; that the Commission lacks appeal authority over the project; that office uses are permitted by the certified Land Use Plan, and that the approved hotel represents a "budget-friendly" overnight accommodation.

With regard to the Commission's appeal authority, the applicant's comment contends that the development is not appealable because it is not located within 100-feet of wetlands. This assertion is not accurate as the project includes development within 100-feet of wetlands. Section 30106 of the Coastal Act defines development to include any "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act". The proposed development includes a subdivision and lot line adjustment between existing Lots 1 and 2 (ref [Exhibit Nos. 4, 5](#)). Lot 2 is a 6.84-acre lot developed with an office complex and parking structure, as well as a depressed basin approximately one-acre in size which has been surveyed as wetlands. A biological report from 2016 was included in the applicant's response and confirms that, "given the general vegetation, soils, and hydrology conditions observed, the retention basin likely supports wetland conditions". Coastal Act Section 30603 – Appeal of action taken by local government after certification - defines the Commission's appeal authority to include the following:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff... [emphasis added]

Thus, the Commission retains appeal authority of the project as the subdivision is not only within 100-feet of wetlands but includes subdivision of a lot containing wetlands. Additionally, the local hearing and associated documents described the project as appealable, and there is no evidence that the applicant objected to this description during the local hearing; in essence, the applicant failed to exhaust the issue.

The letter further argues that the project is not appealable to the Coastal Commission in that the City's Biological Guidelines (a part of the City's Local Coastal Program) definition for wetlands discounts manmade wetlands as sensitive habitat. The letter goes on to say that given the wetlands present on the site are manmade that habitat should not be defined as wetlands and should therefore not be appealable. However, the Commission's appeal authority is not defined by the City's LCP and is instead determined by Coastal Act Section 30603. Section 30603 plainly describes development within 100-feet of "any" wetlands is appealable and does not make a distinction between naturally occurring and manmade wetlands. Numerous previous Commission actions confirm that, for purposes of the Coastal Act, including appeal authority, there is no distinction between natural and manmade wetlands (5-92-188-A4 (Hillside Village South), A-2-PAC-05-018 (North Pacifica LLC)). Commission regulation

13577 also does not separate wetlands by their origin¹. The Army Corps of Engineers, which delineates wetlands under the federal method, does not make this distinction either. (See *Golden Gate Audubon Soc., Inc. v. U.S. Army Corps of Engineers* (N.D. Cal. 1992) 796 F. Supp. 1306, 1313–14 [jurisdiction is determined by whether the site is presently wetlands and not by how it came to be wetlands]).

Additionally, it is not clear at this time that the wetland area is wholly manmade. It is evident that since the 1960s, construction of the El Camino Real, Interstate-5 and upstream development have all significantly altered the subject site and surrounding areas and a detention basin was constructed sometime in the mid-1980s; however, previous United States Geological Survey (USGS) maps indicate that the site historically contained a blue-line stream running north-south across the property. Thus, the wetlands present may be a remnant of the previous stream. Nevertheless, the site contains wetlands and is therefore within the Commission's appeal authority.

Finally, the wetland delineation provided by the applicant's agent is from 2016 and associated within the different development proposal. While the letter includes a very recent biological report (March, 2022), no wetland delineation was conducted as a part of this report. The letter indicates that the closest proposed structure (patio area) is located 103-feet away from wetlands. However, given that the most recent delineation is from more than five years old, the boundaries of the wetland may have changed since then. An updated wetlands delineation would be required to definitively establish the current location of wetlands on the site.

In summary, the applicant's concerns regarding the Commission's appeal authority are not valid and the Commission and City accurately determined the approved development is within the Commission's appeals jurisdiction as defined by 30603 of the Coastal Act.

The second argument provided in the response letter disagrees that construction of the office complex on a site designated for Visitor Commercial is inconsistent with the certified Land Use Plan. The letter indicates that the City's North City West Employment Center Precise Plan (Precise Plan) is applicable as amended, and that office use is allowed under this Plan.

The certified Land Use Plan for the Carmel Valley planning area is the North City West/Carmel Valley Community Plan. The planning area is also covered by various Precise Plans governing the ten neighborhoods within the area. Most of the neighborhoods are located outside of the Coastal Zone, but the Commission has

¹ "Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (Cal. Code of Regs., § 13577(b)(1).)

reviewed and approved several Precise Plans for the neighborhoods within the Coastal Zone.

The North City West Employment Center Precise Plan was originally approved by the City in 1981 and, at that time, based on the findings in the Precise Plan, did not include any lands within the Coastal Zone

In 1983 the City amended the Employment Center Precise Plan in response to the realignment of El Camino Real, adding the subject site into the Precise Plan. It is unclear if the amended document was ever reviewed or certified by the Coastal Commission. However, regardless of whether or not the Employment Center Precise Plan was certified as part of the LCP, the inclusion of the property in this Plan did not change the permitted uses on the site. The underlying Visitor Commercial Land Use designation was not revised. On the contrary, the zoning for the subject site was revised the same time it was added to the Precise Plan. In total, approximately 29-acres of land was added to the Precise Plan in response to the realignment of El Camino Real. Of these, 18.3 were zoned Employment Center. The subject site was rezoned from an agricultural designation to Visitor Commercial. Thus, it is clear that even at the time the Precise Plan was amended by the City, the site was intended for visitor uses.

Furthermore, in August of 1985, the Commission certified the North City West Community Plan LUP and the base zoning (IP) for this site, both of which confirm the visitor-commercial use for the site, and do not permit office uses.

Finally, the letter contends that the project does not raise a substantial issue with regard to adequate protection of lower-cost overnight accommodations. The letter asserts that the City's LCP does not contain policy language requiring such review or requirements. However, Pages 8-9 of the staff report list a number of policies within the LUP that require the Carmel Valley West Community Plan area be developed as a single socio-economic unit. Therefore, the Community Plan does require the City to consider if the development within the Community Plan area is meeting this requirement, including provision of a range of affordability for overnight accommodations.

The letter also asserts that the hotel will provide affordable overnight accommodations. While the City did not review or confirm this claim as part of its approval, the applicant's letter states that the projected per night cost for the approved hotel development is \$160/night. However, \$160/night is not likely to be considered as affordable. The letter further asserts that each room can accommodate up to 6 guests, and when breaking the cost down per person, should meet the definition of low-cost accommodations. The response letter cites an example approved by the Commission where a similar development was broken down into a per person cost to determine affordability and did not require a project to include low-cost units or mitigation fees in-lieu (ref. CDP No. 5-18-0642 (Leonard Julian Sunset Beach, LLC). However, the development approved by that permit is significantly different from the units included in the subject approval. In that case, the hotel units included multiple bedrooms where multiple people/families could comfortably sleep separated from other guests. The units also included full kitchens and in-unit laundry facilities. All of these important elements were memorialized in the special conditions of that permit. Thus, the referenced permit provided for a

unique hotel type that functioned more similar to a single-family home, and in that case, the Commission supported breaking down the hotel price per room. The subject development does not provide multiple bedrooms or in-unit laundry facilities. Additionally, while the response letter indicates the units include kitchen facilities, the plans provided for the hotel do not provide sufficient detail to confirm that kitchen amenities will be included in each unit. The City's approval does not require a minimum number of occupants in each room or require kitchen facilities such that the Commission could be assured that the hotel would function as a lower cost overnight accommodation.