

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



F10a

Filed: 2/8/22
49th Day: 4/20/22
Staff: TR-SD
Staff Report: 3/17/22
Hearing Date: 4/8/22

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of San Diego

Decision: Approved with Conditions

Appeal Number: A-6-NOC-22-0008

Applicant: Hunter Oliver

Location: 3501 Valley Centre Drive, North City, San Diego County. (APN 307-240-04)

Project Description: Subdivision of an undeveloped 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.

Appellants: Commissioners Brownsey and Hart

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair

limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.

If the Commission finds that the appeal raises 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 a substantial issue exists with respect to the grounds on which the appeal has been filed. The project approved by the city proposes 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. Included in the City's approval is an 8-foot-wide public pedestrian and bicycle trail connecting sites east of the subject to Carmel Valley Road and eventually Los Peñasquitos Lagoon ([ref. Exhibit No. 3](#)).

The City found that the proposed project is consistent with the applicable provisions of the certified Local Coastal Program (LCP). However, the development as approved by the city raises several potential LCP inconsistencies with regard to the development proposed. As approved by the city, the development includes construction of an office building, however, the site is zoned as Visitor Commercial and office uses are not permitted by the certified zone. To reconcile the approved use, the city processed a Planned Use Permit, a process by which uses not permitted by the underlying zoning are allowed, if such use can be found consistent with the Land Use Plan (LUP). The certified LUP designates the site for Visitor Commercial uses, and the allowable uses provided in the LUP include motel, restaurant and related services as well as open space. The majority of the proposed project is low-priority offices, inconsistent with the LUP. Visitor-serving commercial is a priority use in the coastal zone, and any revisions to the uses allowed in this land use designation should be reviewed for consistency with the LCP through certification of an LCP Amendment.

Furthermore, the city did not review the affordability of the hotel units proposed, nor did the city review the range of affordability currently provided by the existing hotel/motel units within the Community Plan. The LCP requires that development within the Community Plan area provide a physical, social, and economically balanced community, and construction of a new hotel without evaluating and mitigating for impacts associated with the removal of land area suitable for affordable accommodations is inconsistent with this requirement.

Because of the above-described inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP.

A-6-NOC-22-0008

Oliver

Standard of Review: The subject site is not located between the sea and the first coastal road as defined by Section 30603 of the Coastal Act and therefore the Certified City of San Diego Local Coastal Program is the standard of review.

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. Land Use Plan Consistency	8
C. Protection of Lower Cost Overnight Accommodations	9
D. Substantial Issue Factors	11

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Subject Site and Surrounding Development](#)

[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Parcel Map](#)

[Exhibit 5 – Tentative Parcel Map](#)

[Exhibit 6 – Appeals](#)

I. APPELLANTS CONTEND

The appellants contend that 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 consistency with the designated land use for the site and inadequate protection of lower cost visitor accommodations.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the City Council on October 21, 2021. Conditions of approval include specific requirements for grading, water quality control measures, landscaping, limits for lighting and a requirement to construct the 8-foot wide pedestrian and bicycle pathway for public access prior to the issuance of any construction permit.

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 three 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. (§ 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 San Diego 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 within 100 feet of the stream banks or upland wetland limits. 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 raises 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-NOC-22-0008 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-6-NOC-22-0008 presents 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

A. Project Description and Background

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](#)).

Additional improvements include a landscaped, 8-foot pedestrian and bicycle promenade along the western property line that connects the development to Old El Camino Real and provides access to Carmel Valley Road, the Los Peñasquitos Lagoon, and the Pacific Ocean ([ref. Exhibit No. 3](#)). The city's approval required approval of a height deviation for the 76' hotel structure and 68'6" office building as zoning limits structures to a 60' maximum as well as a Planned Development Permit to permit the office use on a site zoned Visitor Commercial.

The site is located immediately east of Interstate 5 (I-5) and north of State Route 56, on graded pads above Carmel Valley Road ([ref. Exhibit No. 1](#)). To the south of the site is Carmel Valley Road, and Los Peñasquitos Lagoon. Surrounding development includes a fast-food restaurant, Hampton Inn and Residence Inn hotels to the east, a Marriott Hotel, and an office building and at-grade parking lot to the north ([ref. Exhibit No. 2](#)). While the site has housed a few temporary structures over the last three decades, the site has remained primarily vacant and undeveloped.

The Carmel Valley area is a largely master-planned community located along the Interstate 5 corridor containing corporate offices, hotels, shopping, and restaurants. Recreational options include neighborhood parks and a community recreation center, open space areas, and an extensive trail system.

The Standard of Review is the Certified City of San Diego Local Coastal Program.

B. Land Use Plan Consistency

The City of San Diego Local Coastal Program area is divided into a number of Community Plan areas. The subject site is located within the North City West/Carmel Valley Community Plan area. The appellants contend that the City's approval is not consistent with the certified LUP given that the development includes construction of an office structure where office use is not permitted. The North City West (Carmel Valley) Community Plan (the Land Use Plan for the area) designates the site for Visitor Commercial uses. The Implementation Plan designates the site as Commercial Visitor Zone (CV-1-1). The Commercial Visitor Zone does not permit "Office" as an allowed use. The City approved the office use through the issuance of a Planned Development Permit (PDP). The provisions for PDPs allow development to occur with uses that are not permitted in the underlying base zone if the development complies with the applicable land use plan.

The Community Plan designates the site for Visitor Commercial uses and the plan further states:

Commercial Element - Visitor-commercial development on a 15 acre site is proposed at the juncture of State Route 56 and Interstate 5 at the El Camino Real off ramp. The basic proposals for this area are motel, restaurant, and related services to provide for both the adjacent industrial-office park in North City West and industrial complex in Sorrento Valley. In addition, the site is located in favorable proximity to Carmel Valley which is proposed for open space use. The recreational potential of open space can be very desirable factor in enhancing the development of the visitor commercial site.

As described above, the allowable uses provided in the LUP include motel, restaurant and related services as well as open space. A majority component of the project is low-priority office use; even with a restaurant component, offices use is not consistent with the land use plan, which calls for high-priority visitor serving uses.

The site is located at the junction of Interstate-5 and State Route-56. State Route-56 provides critical connectivity between inland communities and the beach. Additionally, a highly-used Park-and-Ride is located just west of the subject site. Surrounding coastal resources include Los Peñasquitos Lagoon, Torrey Pines Reserve and Torrey Pines beach. Thus, the area is highly utilized by residents and visitor alike both to gain access to adjacent coastal resources as well as a mid-travel break for gas, food, restrooms, stretch break, etc.

In 2001, a similar project was reviewed by the Commission first through an amendment to the City's LCP. San Diego Major Amendment No.1-2001 was submitted by the city to accommodate a proposed office development on a 1.1-acre site designated for Visitor-Serving uses and located east of the subject site. Through that process, the amount of land currently providing visitor-commercial uses was thoroughly reviewed, and the Commission determined that there was enough land remaining as visitor-serving to support the change at that time.

The subject site is the last remaining undeveloped lot within the Visitor Commercial Zone of the Carmel Valley Community Plan area. The Carmel Valley Community Plan area totals approximately 5,500-acres in size, of which approximately 15-acres, or 0.27%, have been designated to provide visitor-serving uses. Since the time the Community Plan was certified, the area reserved for high-priority visitor-serving uses has been reduced both by the above-described LCP amendment as well as by the construction of the existing 170,000 sq. ft. office building located on Lot 2 of the subject site ([ref. Exhibit Nos. 2, 5](#)). Given the limited number of sites designated as Visitor Commercial within the Community Plan (LUP), allowing the majority of the site to be developed as office use would impact the supply of visitor-serving land, inconsistent with the LUP.

Finally, the appellants contend that any approvals that deviate from the certified land use designation and zoning requirements should be reviewed through an LCP amendment, and through this process, the amount of land reserved for visitor-serving uses would be fully reviewed and adequate public visitor-serving or recreational amenities ensured, consistent with the requirements of the LCP.

In conclusion, the approved permit would allow a use not authorized by the certified LUP and failed to certify the change in allowed use through certification of an LCP Amendment, inconsistent with the requirements of the LCP. Additionally, by authorizing office use on lands designated for visitor commercial uses, the approval also fails to ensure that adequate land is reserved for prime visitor commercial uses, inconsistent with the requirements of the LUP.

C. Protection of Lower Cost Overnight Accommodations

The appellants contend that the City's approval is inconsistent with the requirements of the LCP because the approval failed to address affordability of the proposed hotel development. Applicable policies in the adopted LUP include the following:

Goals and Planning Concepts of Community Plan state:

Page 50: Goals for North City West

1. To establish a physical, social, and economically balanced community

Page 63: Objectives:

2. In order to promote self containment and community identity, the community must be designed as a total physical-social-economic unit. (Emphasis in original).

Page 79:

Commercial uses such as visitor and office facilities are also considered within the element of the Plan. The allocation of these facilities is based upon access considerations and locational requirements.

Page 111:

In order to promote North City West as a balanced community, a variety of park and recreational facilities will be necessary. The balanced community policy will insure a population representative of all ages, interests, social and economic status in North City West. This population will have different recreational needs. For example, one park may contain playfields and active sports areas while another may offer picnic areas and view points.

The project includes construction of a 77,652 sq. ft., seven-story, 128-room hotel development. Affordable accommodations located in the Coastal Zone support access to the coast for a range of people. Additionally, the certified LUP includes provisions in the Community Plan that require development of the area to be representative of people from all social and economic backgrounds and establish an economically balanced community. Currently, the City of San Diego does not have an abundance of existing lower-cost overnight accommodations within close access to the coast. Additionally, the average occupancy rate for overnight accommodations within San Diego County is 84%. Given this, and in order to adequately carryout the requirements of the certified LCP, the City has the responsibility to ensure that a range of affordable facilities be provided in new development along the coast. The City failed to evaluate the room rates expected for the approved hotel; and renderings of the proposed hotel depict a new hotel with guest amenities that appears to be outside of the lower-income range. While the project will result in an increase of 128 guest rooms on the subject site, thereby increasing the supply of overnight night accommodations in the Coastal Zone, the City did not evaluate the loss of area that could have been developed with lower-cost overnight accommodations or consider mitigation to offset this loss.

Additionally, while there are a number of other hotel developments in proximity to the subject site, the City failed to review the range of affordability currently being provided by existing hotel units. Therefore, it is unclear at this time if there is an appropriate range of affordability for overnight accommodations within the Community Plan area, inconsistent with the requirements of the City's LCP.

D. Substantial Issue Factors

As included in Section III – Appeal Procedures – of this staff report, the Commission must consider five factors when deciding whether a project raises a “substantial issue.” As discussed above, there is inadequate factual and legal support for the City’s determination that the proposed development is consistent with the certified LCP.

First, the objections to the project suggested by the appellants support that the local government’s decision is inconsistent with the certified LCP given the development is not considered as an allowable use by the certified land use designation or zoning.

Second, the City approved a change in use for a major component of the development from high-priority, visitor-serving commercial uses to allow low-priority, office use in an area directly adjacent to multiple major coastal access routes. Through this approval, the City also failed to address how allowing the majority of the site to be developed as an office building would affect the City’s ability to provide adequate visitor-serving lands within the immediate area or within the Community Plan area as a whole.

The third factor is the significance of the coastal resources affected by the decision. The provision of high-priority visitor-servings uses, including affordable overnight accommodations is imperative to ensure that the City provide adequate coastal access and recreational opportunities. Developing the site with low-priority office uses and a hotel that does not provide a range of affordability will significantly impact otherwise available public access and recreational opportunities and therefore adversely affect coastal resources.

Finally, approving uses not permitted by the LCP as well as approving new overnight accommodations that do not include a range of affordability will not only set a negative precedential value of the local government’s decision for future interpretations of its LCP; it will also set a negative statewide precedent. Therefore, the City’s approval does raise issues with precedential value as well as statewide significance.

APPENDIX A – Substantive File Documents

- Carmel Valley Community Plan
- City of San Diego Resolution No. 313757
- San Diego Major Amendment No. 1-2001 Carmel Valley Neighborhood 6 and Public Rights of Way