

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4421
(619) 767-2370



February 18, 2009

City of San Diego
Attn: Kelly Broughton
1222 First Avenue, MS301
San Diego, CA 92101

Re: Coastal Development Permit Jurisdiction for Flower Hill Mall

Dear Mr. Broughton:

This letter is regarding coastal development permit authority at Flower Hill Mall, which is an existing neighborhood shopping center located in the northeast quadrant of the Interstate 5/Via de la Valle interchange within the City of San Diego. We met early in 2008 with you, Betsy McCullough and Cecilia Gallardo to discuss coastal development permit (CDP) jurisdiction for this site. The City presented its position that the original North City Land Use Plan (LUP), a document certified by the Coastal Commission in 1984, with amendments to the document certified in 1985 and 1987, covered this area of the City, and as such, coastal development permit (CDP) jurisdiction rested with the City of San Diego. California Coastal Commission staff, in that meeting, tentatively agreed that the City's position had merit, but wanted to review a number of documents for the North City communities before reaching full concurrence.

Our review of those documents and our records is now complete, and we have determined that CDP jurisdiction for the Flower Hill Mall property rests entirely with the Coastal Commission. All of the arguments in our previous letters to the City regarding this matter are still pertinent. The Flower Hill Mall property is not part of any certified land use plan other than possibly the old North City LUP, although maps within that document are conflicting. To be part of the City's certified LCP, a site must be located within a certified land use plan area, which in the case of the City of San Diego usually takes the form of a community plan or precise plan, in order for the City to assume the authority to issue coastal development permits. The uncertified 1984 Via de la Valle Specific Plan includes conflicting information as to whether or not the center/property lies within its boundary. The center/property is clearly shown to be outside the North City Future Urbanizing Area (Subarea II) planning area to the south. Even if it were within one of those plans, neither are certified areas, and the Coastal Commission continues to issue CDPs for development in those areas, along with development in the shopping center on the south side of Via de la Valle.

Most significantly, however, the City's assertion that the property is part of the certified LCP simply because it is included in the original North City Land Use Plan, which was

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the key point of discussion in our meeting, is incorrect. At the time of effective certification of the City's LCP, and the transfer of CDP authority to the City, a list of areas where certification was deferred was included in the Commission's action. The first eight "areas of deferred certification" on this list are located within the original North City Land Use Plan boundaries, but were clearly not certified when permit authority was transferred to the City on October 17, 1988 (see attached list). Commission staff maintains that the Flower Hill Mall site is included in #2 on that list, which states:

"2) Portions of the San Dieguito River Valley located outside the North City West Community Plan and the redefined floodway/floodplain fringe zones addressed under the resubmitted North City LUP, dated August 1985;"

Some items on the list (#4, Neighborhood 8, is an example) have become certified since 1988 and permit jurisdiction has since been transferred to the City in those instances. No such action has occurred in conjunction with the lands described in #2.

It is Commission staff's understanding that the City has already approved a coastal development permit authorizing a two-lot financial subdivision for this property, and, very recently, an after-the-fact permit for improvements to the Paradise Grille leasehold, which were constructed without a CDP. Because the site is not located within a certified land use plan area, and is identified as an area of deferred certification, it is not part of the certified LCP; thus, it is our position that these permits are invalid with respect to the CDP. If other discretionary permits were approved concurrently, those permits, of course, are valid. The property owners should be directed to our office to apply for coastal development permits directly from this agency for those past items, as well as for all future plans.

It is our understanding that significant modifications to this existing shopping mall have recently been proposed to the City. Whenever review of any applicable City discretionary permits other than a CDP (such as a SDP, PCD, etc.), have been completed, the applicant may apply to this office for the CDP itself. Since this is an uncertified area, Chapter 3 policies of the Coastal Act are the legal standard of review for the Commission.

We realize that the uncertified status of the City's jurisdictional maps is a serious concern for both of our agencies. As we indicated to you in our last meeting, we had taken steps to get updated drafts from our technical services unit in San Francisco and were working on them. Unfortunately, with our ongoing staffing restrictions and workload, progress on correcting/editing the maps has been slow. The current state budgetary constraints will not improve the situation. However, we will endeavor to prioritize this work and coordinate with you and your colleagues as soon as possible.

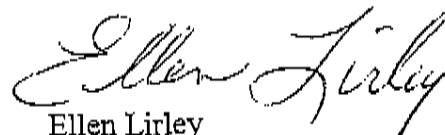
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It is our position that this particular jurisdictional question (Flower Hill Mall) has now been resolved. There are several areas where jurisdictional issues have been raised relative to the draft maps; the City should annotate those areas with direction to seek further consultation with our office. This procedure is not ideal but it is the most prudent course of action until the maps can be updated and formally adopted by both agencies. Please contact us if you disagree with this conclusion, or have any other questions.

Sincerely,



Ellen Lirley
Coastal Planner

cc: Betsy McCullough
Mary Wright
Cecilia Gallardo
Jan Goldsmith
Andrea Dixon
Protea Properties
Helene Deisher
Sherilyn Sarb
Deborah Lee
Lee McEachern
Marsha Venegas

- now certified

EXHIBIT "A"

City of San Diego Areas of Deferred Certification

The geographic areas, districts or sites which were deferred certification on January 13, 1988 in the Coastal Commission's review of the Implementation Plan are as follows:

- 1) Via de la Valle Specific Plan area;
- 2) Portions of the San Dieguito River Valley located outside the North City West Community Plan and the redefined floodway/floodplain fringe zones addressed under the resubmitted North City LUP, dated August 1985;
- 3) The area and properties designated "Future Use Study" and the San Diego Gas & Electric property located within the Los Penasquitos Lagoon and watershed west of Interstate 5;
- 4) Neighborhood #8 Precise Plan area;
- 5) Portions of Carmel Valley located within the City's Urban Reserve and outside the North City West Community Plan;
- 6) Los Penasquitos City Park and Reserve;
- 7) Cal-Sorrento property located at the west end of Los Penasquitos Canyon, just north of the creekbed and east of Interstate 805;
- 8) Torrey Pines City Park;
- 9) The La Jolla Planned District area;
- 10) Mission Bay Park and Land Use Plan segment;
- 11) Famosa Slough; and
- 12) The County Administration Center site.

The geographic areas, districts or sites which were deferred certification on October 14, 1988 in the Coastal Commission's review of the Executive Director's determination for effective certification are as follows:

- 13) Visitor Commercial nodes in Pacific Beach located generally west of and fronting on Mission Blvd. between Law and Pacific Beach Drive and generally fronting on Mission Bay Drive (existing R-400, C, C-1, CA and CO-zoned properties recommended to be rezoned CV);

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Exhibit "A" continued

- 14) Garnet Avenue commercial strip in Pacific Beach extending from Mission Blvd. to roughly Morrell (existing C-zoned properties recommended to be rezoned CC);
- 15) A block located on the south side of Niagara, west of Bacon and bounded by two alleys and situated east of the pier, in Ocean Beach;
- 16) Otay River Valley and South Bay Deferred Certification Study Area, as shown on Attachment 4 of Planning Report No. 88-294; and
~~Otay River Valley floodplain areas, as shown on City Zoning Map #C-704.~~

(3808A)