

ITEM 5

From: [Danny P. Giometti](#)
To: [Brenda Wisneski](#)
Cc: [Martha Ochoa](#)
Subject: Fwd: CDP23-0010 and SDP24-0017 Comments for 6/24 Planning Commission Meeting
Date: Saturday, June 22, 2024 5:49:24 AM
Attachments: [LOC.2024.06.21.pdf](#)
[34535-01 Declaration GWA 6-21-24 DL.PDF](#)

Public comment from the existing storage adjacent to the northern parcel.

Get [Outlook for iOS](#)

From: Peter S. Bauman <pbauman@callahan-law.com>
Sent: Friday, June 21, 2024 4:51:18 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: David C. Palmer <dpalmer@callahan-law.com>
Subject: CDP23-0010 and SDP24-0017 Comments for 6/24 Planning Commission Meeting

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Danny,

For Item No. 5 on the 6/24/24 Planning Commission Calendar,

Please find attached two documents to include in the Administrative Record.

This pertains to CDP23-0010 and SDP24-0017.

Have a nice weekend,

Peter

Peter S. Bauman

CALLAHAN & BLAINE

California's Premier Litigation FirmSM

Peter S. Bauman
Attorney at Law
CALLAHAN & BLAINE
3 Hutton Center Drive, 9th Floor
Santa Ana, CA 92707
Phone: (714) 241-4444 (Office);
Phone: (949) 842-1720 (Cell)
Fax: (714) 241-4445

Privacy Notice: This message is intended only for the use of the individual to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable

Federal or State law. If the reader of this message is not the intended recipient, or the employee or agent responsible for the delivery of the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this email in error, please notify us immediately by telephone or return email and delete the original email and any copies thereof. Thank you.



Please consider the environment before printing this e-mail

From: Danny P. Giometti [mailto:DGIOMETTI@DanaPoint.org]
Sent: Friday, June 21, 2024 11:11 AM
To: Peter S. Bauman
Subject: Re: Email contaCDP23-0010 and SDP24-0017 Comments for 6/24 Meetingct from City of Dana Point

Dgiometti@danapoint.org

Get [Outlook for iOS](#)

From: Dana Point, CA <webmaster@danapoint.org>
Sent: Friday, June 21, 2024 10:57:12 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Email contaCDP23-0010 and SDP24-0017 Comments for 6/24 Meetingct from City of Dana Point

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Message submitted from the <City of Dana Point> website.

Site Visitor Name: Peter Bauman
Site Visitor Email: pbauman@callahan-law.com

Danny,

My office will be submitting comments today in relation to CDP23-0010 and SDP24-0017 Comments for the 6/24 Meeting.

Please provide an email address that we can submit these comments to.

Thank you,

Peter

(949) 842-1720|_____

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

CALLAHAN & BLAINE

California's Premier Litigation FirmSM

EDWARD SUSOLIK
MICHAEL J. SACHS
BRIAN J. MCCORMACK
JAVIER H. VAN OORDT
DAVID J. DARNELL
PETER S. BAUMAN

BRETT E. BITZER
RACHEL E. BODEN
JASON CASERO
RAPHAEL CUNG
JUAN J. CUETO
FRANKLIN T. DUNN
STEPHEN P. FARKAS
JONNY W. HORNBERGER
JOSHUA MARX
LAURA M. MORRIS
SCOTT D. NELSON
BRYAN C. OBERLE
DAVID PALMER
GRIGORY RCHTOUNI
JAMES R. ROUSE
JAMES M. SABOVICH
JOHN D. STANLEY
JOHN D. VAN ACKEREN
SHARON T. YUEN

OF COUNSEL
COLDREN LAW OFFICES
KEVIN GALLAGHER

RETIRED PARTNERS
DANIEL J. CALLAHAN
STEPHEN E. BLAINE

FIRM ADMINISTRATOR
LAURALI M. KOBAL, CLM

OUR FILE NUMBER:

4860-02



June 21, 2024

VIA EMAIL

Danny Giometti
City of Dana Point
Community Development Department
33282 Golden Lantern
Dana Point, 92629
Email: dgiometti@danapoint.org

**Re: FOR INCLUSION INTO ADMINISTRATIVE RECORD
FOR JUNE 24, 2024 PLANNING COMMISSION PUBLIC
HEARING**

AGENDA ITEM NO. 5

Coastal Development Permit CDP24-0010 and Site Development Permit SDP24-0017

Applicant: LaTerra Development

Owner: Pickering Properties, LLC

Location: 25802 and 25831 Victoria Boulevard
(APN: 668-341-45 and APN: 121-254-43)

Dear City Planning Commission:

Please allow the following to raise concerns on behalf of Capistrano/Fortune Partners, LP ("CFP"), regarding agenda item number 5 on the June 24, 2024 Planning Commission calendar for Coastal Development Permit CDP24-0010 and Site Development Permit SDP24-0017, located at 25802 and 25831 Victoria Boulevard (the "Victoria Development"). CFP has owned the adjacent property, located at 25801 Victoria Boulevard since the early 1980's and is a proud Dana Point business owner. Based upon the concerns set forth in this communication, CDP requests that the Planning Commission continue the June 24, 2024 decision on this project until further examination of the details can be addressed. Among other concerns, this project is in the City's floodplain and pursuant to the applicant's engineer, the City and FEMA are currently reviewing a floodplain analysis which could have impacts on this project. It would be best for all involved to revisit this project approval after the San Juan Creek LOMR is finalized and approved by FEMA.

As such, we are writing to request (i) the immediate postponement of that certain public hearing for the Victoria Development on June 24, 2024, and (ii) the disapproval of the Victoria Development based upon the current submission.

City of Dana Point

June 21, 2024

Page 2

1. Non-Compliance with CEQA Class 32 Exemption

We disagree with the assessment that the Victoria Development satisfies the criteria for a CEQA Class 32-In-fill Development Exemption.

Specifically:

- A. The Victoria Development is not consistent with the applicable general plan designation and zoning regulations.
- B. The Victoria Development may have significant ecological value that has not been properly assessed.
- C. The Victoria Development will have significant effects to traffic, noise, air quality and the existing infrastructure does not support a project of this size and scope, which has not been adequately addressed.
- D. The Victoria Development is situated in a Floodplain, the City's plan for this is currently with FEMA for review, and this may impact the project.

General Plan & Zoning Designations

According to General Plan Amendment GPA 20-0001 dated July 20, 2021 ("Plan Amendment"), the Victoria Development is zoned for Commercial/Industrial. Per the Plan Amendment, Commercial/Industrial is described as:

"The Commercial/Industrial designation promotes development of a mixture of commercial, office, and light industrial uses to serve the needs of the community, the City's coastal resources, and a stable and vital local economy. Uses include, but are not limited to, marine-related businesses, professional and business offices, automotive services, light manufacturing, and construction services. This designation encourages the development of mixed commercial and industrial areas. The standard intensity of development is a floor area ratio of .75:1 and the maximum intensity of development is a floor area ratio of 1.5:1."

The proposed addition of over 140,000 square feet of self-storage, especially considering the existing self-storage facility on Victoria Blvd., is not consistent with the intent of the Plan Amendment. The Victoria Development does not promote the development of a mixture of commercial, office or light industrial uses that serve the needs of the community and vital local economy. The key language in the Commercial/Industrial zoning language is "mixture." The proposed Victoria Development is only offering a single use, which already exists in the Commercial/Industrial zone, self-storage. The Victoria Development does not "encourage the development of mixed commercial and industrial areas," but in stark contrast makes Victoria Boulevard a self-storage zone with little to no diversification of use or product type. See Exhibit A, which depicts the total

City of Dana Point

June 21, 2024

Page 3

Commercial/Industrial zone in purple. The area identified in green depicts the total proposed self-storage area in the Commercial/Industrial Zone. As you can see on Exhibit A, more than fifty percent (50%) of the total Commercial/Industrial zone would be allocated to self-storage.

Non-Compliance with Floor to Area Ratio Per Lot

We note applicant and the City have acknowledged that the project exceeds the required Floor to Area Ratio for Parcel 2. As a work-around, the applicant and City propose to treat both parcels as one, and insert a condition of approval requiring the applicant to execute a "Covenant and Agreement to Hold Property as One Parcel." However, the project is to be located on two distinct parcels, separated by a road. Treating the two distinct parcels as a single parcel is improper and the applicant should either submit the proper submissions to join the two parcels, request a variance for Parcel 2, or reduce the size of the building Parcel 2 to comply the V-C/I Zone & General Development Standards.

Ecological Value

Located a mere 1,700 square feet from the coast, the Victoria Development may pose significant ecological value for the surrounding coastal community and habitat. We query whether this ecological value has been adequately assessed. Further investigation is warranted to determine compliance with Federal and State Regulations, including but not limited to the Endangered Species Act, Migratory Bird Treaty Act, Clean Water Act, California Fish and Game Code, California Endangered Species Act, and regional and local policies protecting habitats.

Significant Traffic, Noise and Air Quality Impact

We believe the Victoria Development may significantly impact traffic, noise, and air quality in the surrounding area. Furthermore, the existing infrastructure on Victoria Blvd. does not support a development of this size or density.

Victoria Boulevard is a two-way street that leads to a dead-end at the entrance to the proposed development. The proposed 140,000+ square foot development, which includes hundreds of self-storage units, will significantly increase vehicular and pedestrian traffic to a corridor with limited ingress and egress. The proposed design includes only one vehicular access point, posing a significant design flaw. One driveway serves as an entry and exit for the proposed 3-story 98,354 square foot building (Building 1), a 3-story 47,810 square foot building (Building 2), available drive-up storage units, parking for customers and trolley parking for the City. Victoria Development customers, employees, and City employees attempting to enter the property will struggle to enter the proposed development at the same time as Victoria Development customers, employees, and City

City of Dana Point

June 21, 2024

Page 4

employees attempt to exit the property. It is inevitable that the increased footprint, change in use and proposed design of the proposed development will cause significant traffic and congestion on Victoria Boulevard, backing up to Doheny Park Road.

CFP customers and staff already experience traffic and congestion during peak business hours with the existing boat yard located on the proposed Victoria Development parcels. The increased density and change in property use will exacerbate this issue, causing a significant environmental impact, safety hazards for drivers and pedestrians and increased risk of accidents and number of other public health concerns. Areas of vehicle congestion can create pockets of carbon monoxide that may exceed the State standards. Therefore, a traffic study is warranted.

Moreover, the increased traffic will contribute to higher levels of road noise and increased vehicle emissions. Applicants for the proposed development have requested to increase the maximum floor area ratio permissible under applicable building code for the parcels in question. If approved, this dense building will lead to heavy use of commercial equipment, such as HVAC systems, generators, and other mechanical equipment creating continuous or intermittent noise and air pollution impacting nearby properties. A noise and air quality study for a proposed self-storage use of this size is warranted.

We would like to review the Notice of Exemption Form completed and submitted by the applicant. We believe that further environmental review of this project is required by way of Environmental Impact Report or Mitigated Negative Declaration to gather additional information for this potential development.

Significant Potential Impact on City's Floodplain-2 and Federal Emergency Management District

As mentioned in the Planning Commission Agenda Report – Page 2, “[t]he site is located within the City’s Floodplain-2 (FP-2) Overlay District (Zone “AO” per Federal Emergency Management District - FEMA - maps) and the Coastal Overlay District (the California Coastal Zone). The Floodplain Overlay designation identifies the property as being subject to potential inundation by riparian based flood waters and requires consideration of potential losses due to flood.” The applicant engaged an engineer to review this issue and provide a report and recommendations, which is on page 79 of the staff report. However, applicant’s engineer advises that “there is a San Juan Creek LOMR prepared by JLC Engineering & Consulting, Inc. for the City of Dana Point that is currently under review by FEMA.” This LOMR includes analysis for the developed areas surrounding and discharging into the creek and this proposed development falls within the area of analysis. Once the LOMR is complete, it could have impacts to the original assumptions in this floodplain analysis.

City of Dana Point
June 21, 2024
Page 5

To be sure, Greg Axten, co-founder of American Geotechnical and a licensed Civil and Geotechnical Engineer, has reviewed the staff report and has concerns with the very limited report submitted by David Evens and Associates. It is Mr. Axten's opinion that due to the Victoria Development's adjacency to the San Juan Creek, the project should not be approved until the City/FEMA LOMR is completed so that all potential issues associated with the floodplain can be adequately addressed; including, potential adverse impacts the proposed project could have on existing improvements.

Accordingly, it is unclear how the Planning Commission can approve the Victoria Development now with this underlying issue pending and unresolved. Given the concern of adversely affecting the existing improvements by this new project, the decision on this project should be deferred until the LOMR is complete, applicant's engineer can factor it into his analysis, and the City and surrounding property owners can assess the full impact.

2. Coastal Development Permit & Coastal Commission

Given the Victoria Development's location, within the City's Floodplain-2 (FP-2) Overlay District (Zone "AO" per Federal Emergency Management District - FEMA - maps), the Coastal Overlay District (the California Coastal Zone), being less than 2,000 feet from the ocean, and its potential impacts on the surrounding environmental community, a thorough environmental review is warranted to determine if an Environmental Impact Report or Mitigated Negative Declaration are required. We disagree with the assessment that the Victoria Development has no impact on public access, environmentally sensitive habitats and scenic resources. Due to its proximity to the coast, it is imperative that the California Coastal Commission review the proposed development to ensure it complies with coastal development standards and protects our natural resources.

3. Insufficient Notice Provided / Lack of Due Process

Many community members, including CFP, were not provided with sufficient notice of the Victoria Development and the upcoming public hearing. The public notice was sent on June 6, 2024 for a June 24, 2024 hearing. Given the breath of issues, this timing impedes the ability to fully participate in the decision-making process and voice all comments and concerns. The Planning Commission should continue this hearing to allow for a full consideration of the issues prior to rendering its decision.

4. Conclusion

Considering these issues, we respectfully request the City Planning Commission postpone the public hearing scheduled for June 24, 2024, until a further review is conducted. The community's welfare and the preservation of Dana Point's unique environmental and coastal resources depend on careful and deliberate planning. Rushing

City of Dana Point

June 21, 2024

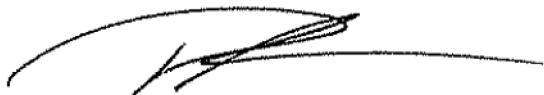
Page 6

the approval process without addressing these significant concerns would be a disservice to our community.

Thank you for your attention to this matter. I look forward to your prompt response and the opportunity to discuss these issues further.

Best regards,

CALLAHAN & BLAINE

A handwritten signature in black ink, appearing to read 'Peter S. Bauman', with a long horizontal flourish extending to the right.

Peter S. Bauman

PSB:jn
Enclosure

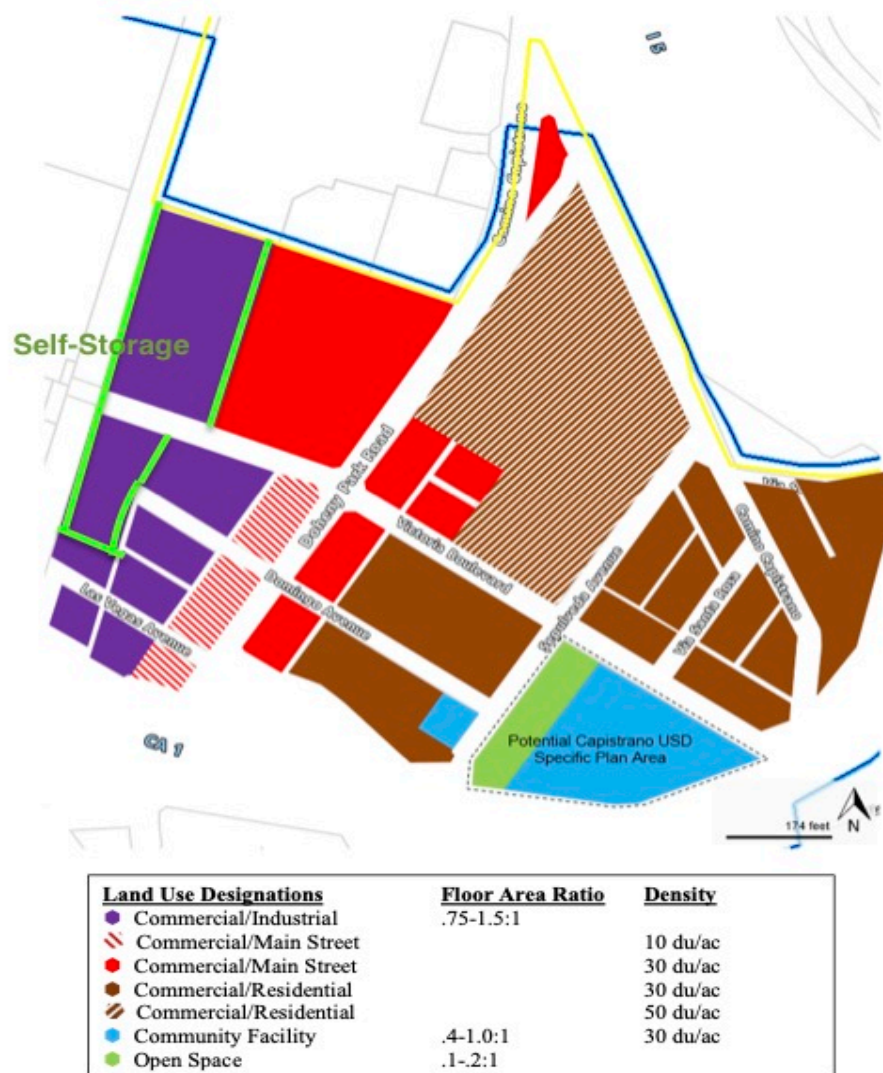
City of Dana Point
June 21, 2024
Page 7

Exhibit A – Commercial/Industrial Zone

*Self-Storage area identified in green

GPA 20-0001/ZTA 20-0001/ZC 20-0001/LCPA 20-0001
PAGE 3

Figure LU-5: Land Use Policy Diagram





American Geotechnical, Inc.

GEOTECHNICAL/CIVIL ENGINEERING, TESTING & INSPECTION

File No. 34535-01

June 21, 2024

Declaration of Gregory W. Axten

Regarding the Dana Point Project
Coastal Development Permit CDP24-0010
Site Development Permit SDP24-0017

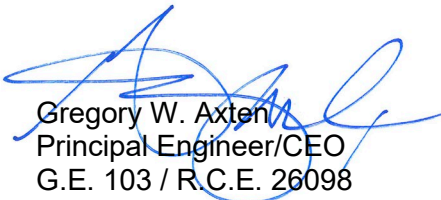
Dear City Planning Commission,

This office has been engaged by Capistrano/Fortune Partners, LP to assist in its review of Coastal Development Permit CDP24-0010 and Site Development Permit SDP24-0017.

I am the co-founder of American Geotechnical and am a licensed Civil and Geotechnical Engineer in the State of California. I have significant experience with projects in Southern California, including Dana Point.

I have reviewed the staff report for the June 24, 2024 Planning Commission, Agenda Item No. 5, with particular interest in the City's Floodplain-2 (FP-2) Overlay District. Of particular note is the very limited report submitted by David Evans and Associates on page 79 of the staff report wherein it appears he recommends the approval of this project despite the City and FEMA still working on the San Juan Creek LOMR. Given the proposed projects adjacency to the San Juan Creek, the City/FEMA LOMR should be completed first before the project is approved so that the project approval can adequately address any and all potential adverse impacts that the proposed project may have on the existing improvements.

Respectfully,


Gregory W. Axten
Principal Engineer/CEO
G.E. 103 / R.C.E. 26098



SP/34535-01 Declaration GWA 6-21-24 DL

22725 Old Canal Road, Yorba Linda, CA 92887 - (714) 685-3900 - FAX (714) 685-3909
4901 Morena Boulevard, Suite 1110, San Diego, CA 92117 - (858) 450-4040 - FAX (858) 457-0814
3100 Fite Circle, Suite 103, Sacramento, CA 95827 - (916) 368-2088 - FAX (916) 368-2188
5600 Spring Mountain Road, Suite 201, Las Vegas, NV 89146 - (702) 562-5046 - FAX (702) 562-2457