

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
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Filed: February 13, 1996
 49th Day: April 4, 1996
 180th Day: August 11, 1996
 Staff: GDC-SD
 Staff Report: March 18, 1996
 Hearing Date: April 9-12, 1996

STAFF REPORT: CONSENT CALENDAR

Th 8a

Application No.: 6-96-20

Applicant: Solana Hills Estates Agent: Brian Perry
 Homeowners Association

Description: Resubdivision of land to allow conversion of existing 10 unit condominium development to fee simple ownership with retention of common interest ownership of the open space parcel by lots 1 through 8 and deletion of common interest ownership of same by lots 9 and 10.

Zoning	Estate Residential - 2 dua
Plan Designation	Estate Residential

Site: 500, 507, 510, 522, 530, 541, 550 San Julio Road and three vacant parcels: lot 7 on San Julio Road and lots 9 and 10 on the east side of Solana Drive between Marine View Avenue and Highland Drive, Solana Beach, San Diego County.

Substantive File Documents: Certified County of San Diego Local Coastal Program (LCP); City of Solana Beach Draft Land Use Plan; CDPs 6-83-652, 6-86-249, 6-87-24, 6-88-514, 6-94-30 and 6-94-164.

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, the applicants shall record restrictions against the subject properties, free of all prior liens and encumbrances, except for tax liens, and binding on the permittees' successors in interest and any subsequent purchasers of any portion of the real property. The restrictions shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type in the area shown on the attached Exhibit "2" and generally described as all naturally vegetated areas with slopes in excess of 25% grade as indicated on the Vesting Tentative Subdivision Map with revision date 9/22/95. The recording documents shall include legal descriptions of both the applicants' entire parcel(s) and the restricted areas, and shall be in a form and content acceptable to the Executive Director. This open space deed restriction shall supercede any previously recorded open space deed restriction recorded pursuant to Coastal Development Permit #6-88-514. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description and History. Proposed is a resubdivision to change the type of ownership of an existing ten-unit planned residential development (PRD) on an approximately 7.85 acre site. The proposal is to change the 10-unit condominium development which was approved as a subdivision in 1988, to 10 fee simple lots through recordation of a new vesting tentative map. Seven existing lots have been developed with single-family residences, while lots 7, 9 and 10 are vacant. In addition, lots 9 and 10 are at a different elevation than the remaining lots and are accessed via a separate street. Because of this geographic separation, the applicant has proposed the removal of ownership interest by lots 9 and 10 in the condominium's common areas which are located adjacent to lots 1 through 8. These common areas consist of open space lot A, a private street and a tennis court. Lots 1 through 8 will retain joint ownership of these common areas.

The existing 10-unit condominium development is located east of Interstate 5 in the City of Solana Beach. Lots 1 through 8 are located at the western terminus of San Julio Road, within a private gated portion of the street. Lots 9 and 10 are located at a lower elevation west of that site along the east side of Solana Drive. The subject property is situated in an area characterized by similarly sized residential developments. The site is located within the Unsewered Overlay area in the previously-certified County of San Diego LCP, but is not located in the Coastal Resource Protection area overlay.

The site has been the subject of numerous coastal development permits, including: CDP #6-83-652 for the construction of a 15-unit Planned Residential Development and miscellaneous improvements; CDP #6-86-249 for grading and construction of 15 condominium units and tennis court; and CDP #6-87-246 for a 15-unit Planned Residential Development, site preparation and construction of an access road. None of the these permits were exercised. Development on the site did eventually occur through CDP #6-88-514 which authorized the existing subdivision and the construction of ten homes under a condominium form of ownership.

2. Visual and Biological Resources. Because the proposed development is located in the City of Solana Beach, which lacks a certified Local Coastal Plan, the standard of review is Chapter 3 of the Coastal Act. Section 30251 of the Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

In addition, Section 30240 of the Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Although the project site is located in an area that had not been proposed for protection under the County of San Diego LCP's Coastal Resource Protection (CRP) Overlay Zone, the project site does contain significant, mature coastal sage scrub vegetation on slopes in excess of 25% grade. In addition, the property is prominently situated within the Interstate 5 coastal access corridor, such that the slopes represent a visual resource. As part of CDP #6-88-514, the Commission required that the steep naturally vegetated slopes in excess of 25% gradient be preserved in open space. However, it appears that the open space easement for the subject subdivision was revised sometime after the Commission's approval such that the recorded open space is in a different configuration than that approved. Coastal Development Permit #6-88-514 required that both the open space lot and the vegetated steep slopes within each individual lot be preserved by an easement. However, the revised easement resulted in no open space areas being preserved within the lot lines of subject lots 1 through 8. A separate parcel beyond the borders of lots 1 through 8, however, is preserved as an open space parcel. In addition, open space areas were retained within lots 9 and 10.

It remains unclear why or how the open space easement was revised. Such a revision was never approved by the Commission. As a matter of note, the subdivision has been the subject of numerous problems over recent years and the property has been sold several times due to bankruptcies of previous owners. The applicant's request for a resubdivision of the property through filing of a new vesting tentative map will require new open space deed restrictions. Condition #1 has been attached requiring the applicants to record new open space deed restrictions which mirror exactly the portions of properties restricted by the City of Solana Beach on the new Solana Hills Estates Vesting Tentative Subdivision Map, as revised on 9/22/95. These restrictions shall apply to lots 9 and 10 individually, and to lots 1 through 8 in common. The Commission's deed restriction will ensure that steep slopes and natural vegetation will be permanently protected pursuant to Sections 30240 and 30251 of the Coastal Act. While lots 9 and 10 are being deleted from their previously undivided interest in the condominium development's common open space area, each parcel individually contains naturally vegetated steep slopes and, therefore, will require open space deed restrictions to be recorded consistent with the aforementioned vesting tentative map. Since the current configuration of the open space areas, as outlined on the proposed Vesting Tentative Subdivision Map, avoids encroachments onto steep slopes, in substantially similar amounts of open space to the previously required open space easements, the future development of the vacant lots should not result in any increase in the level of impacts. In addition, previous encroachments onto naturally vegetated steep slopes have been resolved through restoration/revegetation in association with coastal development permits for construction of the individual homes (CDP #6-94-30 and #6-94-164). With the attached Special Condition #1, imposing restrictions requiring that the steep, naturally vegetated or visually prominent portions of the site be protected from development, the proposal can be found consistent with Sections 30251 and 30240 of the Act.

3. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made. As stated above, the project, as conditioned, is consistent with the applicable policies of Chapter 3 of the Coastal Act.

The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. Because of the incorporation of the City, the certified County Local Coastal Program no longer serves as the valid LCP for the area and, therefore, the Commission's standard of review is the Coastal Act. However, the issues regarding protection of coastal resources in the area have been addressed by the Commission in its review of the County of San Diego LUP and Implementing Ordinances. As such, the Commission will continue to utilize the County LCP documents for guidance in its review of development proposals in the City of Solana Beach until such time as a new or revised LCP is submitted by the City.

The San Diego County LCP contains special overlay areas where sensitive coastal resources are to be protected. The subject property falls within the unsewered overlay area. The requirement for sewer service was, however, a

special condition under CDP #6-87-246, and evidence of sewer service has been provided consistent with the special condition attached to that permit. The Commission finds that, as conditioned, the proposed development conforms to Coastal Act Chapter 3 policies and with the special area regulations contained in the certified County of San Diego LCP. In addition, the existing condominium and proposed change in type of ownership are consistent with the Estate Residential zone of the City of Solana Beach and the previously certified County of San Diego LCP. The development's approval, as conditioned, will not prejudice the ability of the City of Solana Beach to complete a certifiable Local Coastal Program.

4. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, as conditioned, the project has been found consistent with the biological and visual resource policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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