

CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

RECORD PACKET COPY
Staff: DL-SD
Staff Report: August 22, 1996
Hearing Date: September 10-13, 1996



AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-94-134-A

Applicant: RSTM Partners Agent: Byron Holmes

Original Description: Construction of a 5,157 sq.ft. single-family residence with an attached 796 sq.ft. garage, a 392 sq.ft. detached guest house, and pool, on a 2.91 acre lot.

Proposed Amendment: Amend previously recorded open space deed restriction to allow construction of a new 5-foot high fence within open space area, and retention of an existing swimming pool and surrounding patio, a portion of which encroaches into the open space, in apparent violation of the Coastal Act.

Lot Area 126,760 sq. ft.
Parking Spaces 4
Zoning A70 & RR .35
Plan Designation Impact Sensitive, Estate Residential

Site: 17130 El Camino Real, Rancho Santa Fe, San Diego County.
APN 266-030-32.

Substantive File Documents: Certified County of San Diego Local Coastal Program

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed amendment request. The original permit required that an open space deed restriction covering the wetlands and a 100-foot wide upland buffer be recorded against the property. The proposed amendment will not lessen or avoid the intended effect of the previously approved permit, as in this particular case, the proposed fence will be located in the upper half of the wetland buffer, in an area of ornamental vegetation, at a significant elevational difference from the wetland area. The fence may reduce human and domestic animal intrusion into the wetlands. Contrary to the approved permit, as built, the swimming pool encroaches slightly into the approved wetland buffer; however, this minor encroachment will not have a significant adverse impact on the quality of the wetland habitat. The one special condition requires the applicant to amend the deed restriction within 60 days of Commission action to allow a portion of the pool and the fence to encroach into the open space.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit amendment for the proposed development, subject to the conditions below, on the grounds that the development as amended, 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 amendment is subject to the following conditions:

1. Open Space Deed Restriction. Prior to the issuance of the coastal development permit amendment, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall be recorded within 60 days of Commission action. Failure to comply with the requirements within the time periods specified, or within such additional time as may be granted by the Executive Director for good cause, will terminate the amendment approval. The restriction shall prohibit any development, including but not limited to, alteration of landforms, removal of vegetation or the erection of structures of any type, except for landscaping in accordance with Special Condition #2 of CDP #6-94-134, and a 5-foot high fence and a portion of the swimming pool and patio as shown on the attached Exhibit 2 of CDP amendment #6-94-134-A, in the area shown on Exhibit 2 and generally described as that area identified in the Wetland Determination dated October 9, 1994 as having wetland resource values, plus an area one-hundred (100) feet in width located landward of the upland boundary of wetland vegetation. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area, and shall be in a form and content acceptable to the Executive Director. 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. Original Project Description. On November 15, 1994, the Commission approved an application for construction of a 5,157 sq.ft. single-family residence with an attached 796 sq.ft. garage, a 392 sq.ft. detached guest house, and a pool on a 2.91 acre lot. The triangular-shaped site is located just west of where El Camino Real becomes La Noria, in the Rancho Santa Fe Community of the County of San Diego. The lot is located along the Escondido Creek floodplain, northeast of San Elijo Lagoon. A portion of the site contains wetland vegetation, and a small portion of the site is located within the 100-year floodplain.

The Commission approved construction of the residence, guest house, and pool on the existing manufactured pad on the upland portion of the site, with special conditions requiring an open space deed restriction covering the wetland portion of the site and a 100-foot wide upland buffer, recordation of a landscaping plan compatible with the adjacent sensitive vegetation, final plans, recordation of a waiver of liability, and identification of an import site for graded material. The open space deed restriction prohibits any development, including but not limited to alteration of landforms, removal of vegetation, or the erection of structures of any type, except for the approved landscaping.

2. Amendment Request. The applicant has indicated that the swimming pool and surrounding concrete patio approved in the original permit were inadvertently constructed approximately 10 feet into the 100-foot wide wetland buffer. Thus, the applicant is proposing to amend the previously approved open space deed restriction to allow retention of the pool/patio. Also proposed is construction of a new 5-foot high fence around the turfed area in the upper half of the deed restricted wetland buffer.

3. No Waiver of Violation. Although development has taken place inconsistent with the terms of the previous permit approval, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. Sensitive Resources. Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

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 those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

A wetland boundary determination performed on the site (RBRiggan, 1994) found that a portion of the site running along the western border of the lot contains wetland vegetation. Typically, the Commission requires that no development occur within 100 feet of wetland (fresh or saltwater marsh) areas, or within 50 feet of riparian areas. Thus, as noted above, the original permit placed the wetland area and associated buffer area into permanent open space through a deed restriction prohibiting the removal of any vegetation, alteration of natural landforms or erection of any structures, except for landscaping compatible with the adjacent sensitive vegetation. The landscaping consists of largely ornamental shrubs and lawn in the upper half of the buffer near the residence, gradually transitioning into native vegetation closer to the boundary of the wetland vegetation.

The purpose of establishing a buffer area between wetlands and development is to reduce the amount of human and domestic animal intrusion into sensitive vegetation, to reduce the impact of human activity on native wildlife species, to provide an area of land which can filter drainage and runoff from developed areas before it impacts the wetlands, and to provide a upland resting/retreat area for some wetland animal species. The Commission has in the past allowed passive uses such as fences or trails to encroach into the upper half (the side away from the actual wetlands) of buffers. These encroachments often do not significantly impact the wetlands, particularly if there is an elevational difference between the encroachment and the wetlands.

The proposed project involves an approximate 10-foot encroachment by the previously approved swimming pool and a portion of the surrounding patio into the 100-foot buffer previously approved by the Commission. The area surrounding the pool is landscaped with a mix of ornamental and native shrubs and trees. The minor encroachment of the pool and patio does not significantly impact any native vegetation.

Also proposed is a new 5-foot high, wood and mesh fence surrounding the lawn and pool area. The fence would be located on the upper portion of the building pad, a minimum of 50 feet from the wetland vegetation, and approximately 11 feet higher in elevation than the wetlands. Like the pool, the fence would be located in an area consisting mainly of ornamental landscaping, with some native and naturalizing plant materials as required in the approved landscaping plan. No significant impacts to native vegetation would result from erection of a fence. The landscaping on the site includes a number of specimen-size trees around the area of the proposed fence and

between the fence and the wetlands. Thus, the fence would not adversely impact sensitive wetland fauna by providing new perching opportunities for raptors. Rather, the fence may have the effect of reducing encroachment into the wetlands and the remainder of the buffer area by keeping humans and domestic animals away from the wetlands. Because the fence is located in the upper half of the buffer, around the landscaped lawn and pool, it will not impede the movement of wildlife around the lagoon and wetland area. In addition, the fence and pool encroachments will not adversely impact drainage patterns on the site. Thus, in this particular case, allowing the existing and proposed minor encroachments into the wetland buffer will not adversely impact the wetland habitat, and the amendment will not have the effect of lessening or avoiding the intended effect of the previously approved permit conditions.

Special Condition #1 requires the applicant to amend the previously approved deed restriction to allow the above-described improvements. Because the project involves after-the-fact development, the condition includes a 60 day time limit on recording the amended deed restriction to bring the development into compliance with the prior Commission action. The deed restriction as amended will continue to ensure that this applicant and future owners are aware of the importance of maintaining the wetlands and buffer area, and recognize the limitations on development in this location.

Given the special condition, the existing environmentally sensitive habitat area will be afforded an appropriate level of protection from this particular development. Therefore, the Commission finds that the subject amendment proposal as conditioned is consistent with Sections 30231 and 30240 of the Coastal Act and with the certified County LCP.

5. Visual Impacts. Section 30251 of the Act requires that the scenic and visual qualities of coastal areas be protected, that permitted development be sited and designed to protect views along the ocean and scenic coastal area, and that development be visually compatible with the character of surrounding areas. As noted above, the site is located within the County's CRP overlay. The CRP designator also invokes the County's Scenic Area regulations. The Scenic Area overlay regulates development in areas of high scenic value to assure the exclusion of incompatible uses and structures, and to preserve and enhance the scenic resources present in adjacent areas. The site of the proposed development is located northeast of San Elijo Lagoon. There are numerous trail systems throughout the lagoon from which new development could pose a potential visual impact.

The subject area is characterized by large-lot estate residences, with a number of vacant and/or open space sites. Fencing associated with residential structures and horse corrals is common in the area. The existing residence is compatible in size and scale with surrounding residences. The proposed fence and the existing pool encroachment will not have an adverse impact on the visual quality of the area. Landscaping on the site, in accordance with the previously approved landscape plan, has the effect of screening the residence and associated structures from views from the lagoon. The proposed 5-foot high fence will not be visible from any major coastal access routes.

Therefore, the Commission finds the amended project as conditioned in conformance with Section 30251 of the Act and the County LCP.

6. Local Coastal Planning. Section 30604 (a) requires that a coastal development permit amendment shall be issued only if the Commission finds that the permitted development as amended 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.

The project site is zoned and planned in the certified County of San Diego LCP for Estate Residential uses, and is also designated as an Impact Sensitive area. As discussed above, as conditioned, the proposed project is consistent with these designations, and with the CRP designation. Therefore, approval of the amendment as conditioned is consistent with Chapter 3 policies of the Coastal Act and will not prejudice the ability of the County of San Diego to implement its certified LCP.

7. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, 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.

The proposed project has been conditioned in order to be found consistent with the biological resource policies of the Coastal Act. Mitigation measures, including recordation of a revised open space deed restriction, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed amendment, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

(1288A)

