

CALIFORNIA COASTAL COMMISSION

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Filed: 11/22/00
Staff: DSL-SC
Staff Report: 01/22/01
Hearing Date: 02/15/01

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NO.: A-3-SLO-98-087-R

APPLICANT: CABRILLO ASSOCIATES/CENTRAL COAST
ENGINEERING (Charles Pratt and Ben Maddalena)

PROJECT DESCRIPTION: Request for the reconsideration of the denial of a Coastal Development Permit for the subdivision of a 124-acre site into 41 residential lots ranging in size from 20,000 sq. ft. to 73,740 sq. ft. and 3 open space lots consisting of 88 acres for native plant preservation, a cul-de-sac turn around, and drainage and recreation facilities. The project includes a Variance to allow for grading on slopes greater than 20 percent.

PROJECT LOCATION: Hillside south of and surrounding the existing Cabrillo Estates development in the community of Los Osos, San Luis Obispo County (APNs: 074-021-036, 042, 043, and 74-022-033).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission deny the request for reconsideration because no error of fact or law has been identified that has the potential to alter the Commission's decision.

SUBSTANTIVE FILE DOCUMENTS: San Luis Obispo Certified Local Coastal Program, Permit File 3-SLO-98-087 and Vested Right Claim File 3-99-48 VRC, and Reconsideration Request dated July 11, 2000.

PROCEDURAL NOTE: The Commission's regulations provide that at any time within thirty days following a final Commission action on a permit, the applicant may ask the Commission to reconsider all or a portion of their action. (CCR, Title 14, Section 13109.2) The grounds for reconsideration are provided in Coastal Act Section 30627, that states in part; "**The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence could not have been presented at the hearing on the matter or that an error of fact or law occurred which has the potential of altering the initial decision**" (Public Resources Code, Section 30627 (b) (3))

EFFECT OF GRANTING RECONSIDERATION: If the Commission grants the request for reconsideration, a de novo hearing will be scheduled for a subsequent Commission meeting.

APPLICANT'S CONTENTIONS

In his reconsideration request dated July 11, 2000 and received in the Santa Cruz office on July 12, 2000, the applicant contends that errors of fact and law occurred at the June 2000 Commission hearing on the Cabrillo Estates Subdivision project (A-3-SLO-98-087). According to the applicant, correction of these errors has the potential to alter the Commission's decision to deny the project. The applicant is not asserting that there is new relevant information regarding the project that could not have been presented at the June meeting. This recommendation will thus focus on whether there were "errors of fact or law" as identified by the applicant and, if so, would the error(s) have the potential to alter the June decision.

The Applicant's individual contentions are summarized below. Each of these contentions is discussed in detail in the Findings (pages 4 through 8 of the Staff Recommendation). Please see also Exhibit 1, Applicant's letter requesting reconsideration.

1. The Commission violated PRC Section 30010 because denial of the subdivision effected a "taking" of the Applicant's property.
2. The Adopted Findings did not respond to "numerous legal issues" raised by the Applicant or consider the "voluminous materials submitted in the Applicant's behalf".
3. The Adopted Findings are not supported by substantial evidence.
4. The Applicant submitted detailed factual and legal analysis of the project that was not evaluated by the Commission.
5. Staff inspected and photographed the site without explicit authorization from the Applicant

MOTION

MOTION: I move that the Commission grant reconsideration of Coastal Development Permit A-3-SLO-98-087.

STAFF RECOMMENDATION: Staff recommends a NO vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY RECONSIDERATION: The Commission hereby denies the request for reconsideration of the Commission's decision on Coastal Development Permit A-3-SLO-98-087 on the grounds that there is no relevant new information which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has any error of fact or law occurred which has the potential to alter the Commissions' initial decision.

FINDINGS AND DECLARATIONS

1. Permit History and Background: San Luis Obispo County's action to approve this subdivision near Los Osos was appealed to the Commission by Commissioners Wan and Reilly, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, the California Department of Parks and Recreation, California Native Plant Society, John Chestnut and Randall Knight. The basis for the appeals were that the project as approved by the County was inconsistent with policies of the certified Local Coastal Program (LCP) relevant to the protection of Environmentally Sensitive Habitat Areas (ESHA) and visual resources. On January 13, 1999 the Commission determined that the County's action on the Coastal Development Permit raised a substantial issue relevant to consistency with the applicable policies and implementing ordinances of the certified LCP and took jurisdiction over the project.

During the same period of early 1999, the Applicant also submitted a Claim of Vested Right for this subdivision. Action on the appeal was therefore delayed to accommodate the Applicants' desire to proceed with the vested right claim before the Commission heard the appeal.

The Applicant subsequently submitted voluminous amounts of documents and plans in support of both the Vested Rights Claim and the appealed project. By the time of the Commission hearing in June of 2000 on both the Vested Right Claim and the appeal, several thousand pages of material had been submitted for staff review.

Both the Vested Right Claim and the appealed project were heard by the Commission on June 15, 2000 at the Santa Barbara meeting. The Vested Right Claim was heard first and denied by the Commission because the evidence offered by the Applicant was not sufficient to meet the criteria for granting the claim. Detailed findings supporting the Commission's decision were adopted unanimously (VRC 3-99-48 VRC). The Commission then considered the project and denied it because the proposal did not adequately protect ESHA and visual resources as required by the LCP and did not comply with certified LCP policies and ordinances relevant to water and sewer provisions for the new subdivision. (Findings for A-3-SLO-98-087, adopted June 15, 2000)

On July 12, 2000, the Commission received a timely request for reconsideration of the Commission's action on both the Vested Right Claim and the Coastal Development Permit for the subdivision. Staff advised the Applicant that the Commission regulations did not provide for the

reconsideration of Vested Rights Claims but that the request regarding the Coastal Development Permit would be scheduled upon receipt of the required fee and public noticing materials. The final materials were received in November of 2000 and the request for reconsideration scheduled for the February 2001 hearing in San Luis Obispo.

2. Request for Reconsideration: The Commission's Regulations provide that at any time within 30 days of the Commission's action on a permit, the Applicant may ask the Commission to reconsider all or a portion of its' action. (CCR Title 14, Section 13109.2) In order to file a request for reconsideration, the Applicant must submit a fee as required by CCR Title 14, Sections 13055(a)(11) or (12) and the public noticing materials described in Section 13109.5(a). The grounds for reconsideration are provided in Coastal Act Section 30627 which states in part: *"The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence, could not have been presented at the hearing on the matter or that an error of fact or law occurred which has the potential of altering the initial decision."*

In this case, the Applicant is asserting only errors of fact or law occurred. Therefore, the Commission must determine whether any legal or factual errors were made and if so, would knowledge of the true fact or legal point have altered its' action on this item. If the Commission determines that grounds for reconsideration exist, the request should be approved and a new hearing on whether to approve a coastal development permit for the project will be scheduled for a subsequent Commission meeting. If the Commission determined that grounds for reconsideration of the June 2000 action do not exist, the initial decision to deny the project stands.

The applicant has offered a number of reasons why he believes the Commission should reconsider its' action to deny the permit for the subdivision. Each of these contentions is discussed in the following sections of these findings.

Applicant's First Contention, "Takings" Issue

1. Violation of Coastal Act § 30010.

"P.R.C. § 30010 provides that the Commission "acting pursuant to this division to exercise their power to grant or deny a permit" is not authorized to do so "in a manner which will take or damage private property for public use, without the payment of just compensation therefor." The Applicant/Claimant has submitted two meaningful applications to develop his property, concurrently sought a variance, sought an exemption from the requirements of the Act, and engaged in a process during the second application which included the concurrent consideration of every feasible development alternative for the subject property. Nonetheless, the findings adopted by the Commission would render futile submitting any additional applications regarding this property. The findings of

alleged LCP inconsistency are so all inclusive as to deny reasonable prospect of the approval of any application." (Excerpt from Applicant's Request for Reconsideration, 7/11/00)

Analysis: In this contention the Applicant asserts that he has submitted two applications to develop his property, a claim of exemption (Vested Right Claim) and all feasible alternatives for development of the site and therefore the Commission's action to deny, rather than conditionally approve CDP A-3-SLO-98-087 has effected a taking of his property inconsistent with the provisions of PRC Section 30010 that states that the Commission may not act on a permit in a manner that would "take or damage private property for public use, without the payment of just compensation thereof." This violation of Section 20010 would be an error of law.

The Applicant is essentially contending that he has proposed numerous applications and alternatives for development of the subject property and since all of these proposals have been rejected by the Commission, his property has been "taken for public use." He further implies that the Commission acted inconsistently when it failed to craft conditions that would allow the project to be approved.

To clarify the record, the Applicant has not submitted two applications to the Commission for this property that were then denied. In 1987, the Commission approved a subdivision that included \pm 81 acres of the current project site (Tract 1342, CDP 4-87-337). The current project includes this 81 acre parcel and two others to make up what is now a 124 acre site, known as Tract 1873. Since 1987, none of the property making up Tract 1873 or Tract 1873 has been the subject of a coastal permit application or appeal before the Commission until the instant appeal.

The Applicant also applied for a "Claim of Vested Right for Tract 1873, but a VRC is a significantly different proceeding than a permit hearing because the focus in a VRC is not on the environmental impacts of the project or its consistency with the LCP but rather technical legal requirements focused on whether substantial work was accomplished subject to valid permits before a new law (such as the Coastal Act) took effect. Thus while the subject of the VRC may have been the same property considered in the permit, denial of a VRC does not go to the merits of the project and cannot be considered a denial on substantive, LCP grounds.

The Applicant asserts that all feasible alternatives to the proposed project were submitted for review and rejected by the Commission. In fact, the narrow alternatives submitted by the Applicant did not respond to the issues raised by the appeal because they all involved development within ESHA and development that did not mitigate impacts on visual resources.

The Commission also notes that in the adopted Findings, it is clear that the Commission finds that *"Denial of this project does not preclude the property owner from making a reasonable economic use of private property"* (pg. 3, Findings) Suggestions for approvable alternatives are offered

throughout the Findings as well. (Pg. 17, para. 2, para. 4, para. 5; pg. 18, para. 3, para. 4; pg. 27, para. 3; pg. 30, para.3; pg. 31, para.2; pg. 34, para. 2) Taken as a whole, the Adopted Findings offer a number of alternatives for a less dense project that could be found consistent with the policies and ordinances of the LCP and provide a reasonable economic return. There is therefore no error or law regarding the consistency of the Commission's action with PRC 30010 and reconsideration should not be granted based on this contention.

Finally, the Commission notes that the statute provides for the Commission to approve, approve conditionally or deny permit applications. There is no requirement in the Coastal Act that the Commission craft conditions that would make a project approvable. That said, in many instances the Commission does provide conditions to make an approval possible. In cases, such as this one, where the project would have to be completely redesigned, the Commission will often offer suggestions as part of the denial, but leave it to the Applicant to design a future project.

Applicant's Second Contention

2. The Findings Are Inadequate.

"The Applicant/Claimant presented numerous legal issues throughout the record to which there was no response of any kind whatsoever within the record, thereby rendering the findings inadequate. The Commission failed to consider or reference within the findings or otherwise rebut any of the voluminous materials submitted in the Applicant's/Claimant's behalf. Therefore, the decision itself is not supported by adequate findings." (Excerpt from Applicants Request for Reconsideration, 7/11/00)

Analysis: The Applicant contends that because the Commission did not respond to the numerous legal issues raised by him and to the supplemental material submitted on his behalf, the Findings are inadequate.

The Applicant did raise many legal issues – most related to the vested right claim – and submitted volumes of material – much of which related only tangentially to the project or duplicated documents already available to staff. The legal issues relevant to the vested right claim were addressed in depth and great detail in the staff report prepared for the vested right claim.

The voluminous other materials submitted by the applicant were also reviewed by staff but were in fact of little help in analyzing the project because much of the material was irrelevant to the substantive planning issues raised by the project. An example of superfluous material would be the numerous plans for infrastructure and other improvements that have long since been made to nearby, developed subdivisions. The purpose of legally adequate findings is to supply the reasoning that leads to the decision making body's action. As such, they must include all relevant information that contributes to this goal. The inclusion of lengthy discussions of irrelevant and

tangential information is not required in order to adopt adequate findings and was not done so in this case. This omission of irrelevant information is thus not an error of fact or law.

Applicant's Third Contention

3. The Decision Of The Commission Is Not Supported By Substantial Evidence.

"The Applicant/Claimant submitted extensive background materials and documentation which were not considered by the Commission. In most instances, there is no substantial evidence to rebut the evidence submitted by the applicant. Therefore, the decision of the Commission, as well as its findings, are not supported by substantial evidence." (Excerpt from Applicant's Request for Reconsideration, 7/11/00)

Analysis: This contention is very similar to the Applicant's second contention – the Commission did not consider or rebut the volumes of material submitted by the Applicant and therefore there is no substantial evidence to support the Commission's Findings for denial of the project.

Regarding the first prong of this contention – failure to consider the submitted material – the previous analysis for Applicant's second contention addresses this issue. Regarding the assertion that the Commission's Findings are not supported by substantial evidence, a review of the Findings reveals that every conclusion relevant to consistency with applicable portions of the LCP is supported by substantial evidence gathered from the E.I.R., County records, expert opinions, and staff research. The Commission must make a Finding supported by substantial evidence on every relevant issue that leads to its decision to deny the requested coastal permit. The Commission has more than met the standard in this case. Since the Applicant has not provided a single example of a specific conclusion that is not adequately supported, it is difficult to find that an error of fact or law has occurred.

Applicant's Fourth Contention

4. Incorporation By Reference.

"The Applicant/Claimant has expended substantial efforts in submitting detailed legal and factual analysis to the Commission and the Commission Staff. Those materials were not considered or evaluated by the Commission. Rather than incur unreasonable additional expense in restating those items and materials, the Applicant/Claimant hereby incorporates all of those legal contentions, arguments, supporting materials, and evidence herein by this reference as though set forth in full at this place, and made a part of this request for reconsideration." (Excerpt from Applicant's Request for Reconsideration , 7/11/00)

Analysis: This is essentially a restatement of Applicant's Contention # Two with a request that the volumes of material submitted for the VRC and the Appeal be incorporated by reference into this request. The previous analysis (Applicant's Second Contention, pg. 6) addresses this issue.

Applicant's Fifth Contention

5. Unreasonable And Unconstitutional Search Of The Applicant's/Claimant's Property.

"The Commission Staff without prior notice to the Applicant/Claimant inspected the Applicant's/Claimant's property. This lead to a photographic presentation which the Applicant/Claimant was provided no opportunity to rebut, since the Applicant/Claimant was not provided prior notice and opportunity to accompany the Commission Staff at its inspection of the property. This violated not only the due process rights of the Applicant/Claimant, but also the right not to be subjected to unreasonable search of the Applicant's/Claimant's property without an opportunity to accompany the Commission Staff. At no point did the Commission Staff inform the Applicant/Claimant or the Applicant's/Claimant's representatives of its intention to survey and inspect the property. Instead, the Commission Staff chose to trespass upon the Applicant's/Claimant's property in an effort to collect evidence with no ability to determine where the various evidence was collected, or to verify the alleged locations. Such actions represent a pattern of oppressive conduct which denied the Applicant/Claimant of his right to a fair hearing."
(Excerpt from Applicant's Request for Reconsideration, 7/11/00)

Analysis: This contention must be directed towards the site inspection undertaken in conjunction with processing of the Vested Right Claim¹ because planning staff responsible for the appeal, which is the subject of this reconsideration, did not visit the site. The Commission notes however that both the Commission's permit application forms and those of San Luis Obispo County contain a provision that authorizes planning staff to conduct independent site inspections. In practice, site inspections are often conducted without the applicant as Commission staff is sufficiently trained to interpret the site features to be inspected .

¹ The Vested Right Claim is not the subject of this reconsideration and therefore this contention is not relevant to request before the Commission . The Commission notes that in this case, the photographs identified in this contention were in the file and available for review for several weeks before the VRC was heard in June.

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July 11, 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

VIA FACSIMILE (Without Enclosures) AND
VIA CALIFORNIA OVERNIGHT (With Enclosures)

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California Coastal Commission
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Tami Grove
District Director
California Coastal Commission
Central Coast Area Office
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Santa Cruz, CA 95060

Re: Request for Reconsideration
Applicant/Claimant:

Project Location:

Permit No.:

Hearing Date:

Permit No.:

Claim of Exemption/

Vested Rights Hearing:

Permit No.:

De Novo Hearing

Charles Pratt Construction
Central Coast Engineering
Cabrillo Estates, Los Osos
San Luis Obispo County
A-3-SLO-98-087
January 13, 1999
3-99-048-VRC

June 15, 2000
A-3-SLO-98-087
June 15, 2000

Dear Mr. Douglas and Ms. Grove:

This office represents the Applicant/Claimant in the above-referenced matters.

The Applicant/Claimant hereby requests formal reconsideration of the denial of the above-referenced Project and Claim of Exemption pursuant to Public Resources Code § 30627 and 14 Cal. Admin. Code § 13109.1, et seq.

The grounds for this request for reconsideration is that "an error of fact or law has occurred which has the potential of altering the initial decision." (P.R.C. § 30627(b)(3)). The grounds for reconsideration include the following:

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1. Violation Of Coastal Act § 30010.

P.R.C. § 30010 provides that the Commission "acting pursuant to this division to exercise their power to grant or deny a permit" is not authorized to do so "in a manner which will take or damage private property for public use, without the payment of just compensation therefor." The Applicant/Claimant has submitted two meaningful applications to develop his property, concurrently sought a variance, sought an exemption from the requirements of the Act, and engaged in a process during the second application which included the concurrent consideration of every feasible development alternative for the subject property. Nonetheless, the findings adopted by the Commission would render futile submitting any additional applications regarding his property. The findings of alleged LCP inconsistency are so all inclusive as to deny reasonable prospect of the approval of any application.

Moreover, the Commission had within its power the authority to impose conditions upon the Project so that it could be consistent in the Commission's view with Coastal Act policies. Instead of imposing any such conditions, the Commission instead simply denied the Project. This is inconsistent with other Commission actions, including A. J. Wright, Application No. A-3-SLO-99-083 hearing of May 11, 2000, Special Condition 1 of which required the applicant to submit a reduced density project. Another example is the Cloisters Morro Bay Project, wherein the Commission adopted Special Conditions to the issues of concern with regard to water supply, etc., which conditions could also have been applied in this Project rather than merely denying it. The refusal of the Commission to identify any feasible alternative Project necessarily leads to the conclusion that there is no reasonable alternative Project which the Applicant/Claimant could submit under the extensive findings adopted by the Commission. Therefore, there has been a complete taking of any beneficial use of the Applicant's/Claimant's property without the payment of just compensation.

By submitting this request for reconsideration, the Applicant/Claimant intends to once more seek redress from the Commission, and urge the Commission to approve some beneficial use of the property. The failure to do so not only constitutes a taking of private property, but also denial of substantive and procedural due process and equal protection rights guaranteed by the Constitutions of the United States and the State of California. The Applicant/Claimant by this request for reconsideration hereby exhausts all of his available administrative remedies, and in addition, the takings issue becomes fully ripe.

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2. The Findings Are Inadequate.

The Applicant/Claimant presented numerous legal issues throughout the record to which there was no response of any kind whatsoever within the record, thereby rendering the findings inadequate. The Commission failed to consider or reference within the findings or otherwise rebut any of the voluminous materials submitted in the Applicant's/Claimant's behalf. Therefore, the decision itself is not supported by adequate findings.

3. The Decision Of The Commission Is Not Support By Substantial Evidence.

The Applicant/Claimant submitted extensive background materials and documentation which were not considered by the Commission. In most instances, there is no substantial evidence to rebut the evidence submitted by the applicant. Therefore, the decision of the Commission, as well as its findings, are not supported by substantial evidence.

4. Incorporation By Reference.

The Applicant/Claimant has expended substantial efforts in submitting detailed legal and factual analysis to the Commission and the Commission Staff. Those materials were not considered or evaluated by the Commission. Rather than incur unreasonable additional expense in restating those items and materials, the Applicant/Claimant hereby incorporates all of those legal contentions, arguments, supporting materials, and evidence herein by this reference as though set forth in full at this place, and made a part of this request for reconsideration.

5. Unreasonable And Unconstitutional Search Of The Applicant's/Claimant's Property.

The Commission Staff without prior notice to the Applicant/Claimant inspected the Applicant's/Claimant's property. This lead to a photographic presentation which the Applicant/Claimant was provided no opportunity to rebut, since the Applicant/Claimant was not provided prior notice and opportunity to accompany the Commission Staff at its inspection of the property. This violated not only the due process rights of the Applicant/Claimant, but also the right not to be subjected to unreasonable search of the Applicant's/Claimant's property without an opportunity to accompany the Commission Staff. At no point did the Commission Staff inform the Applicant/Claimant or the

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Tami Grove
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Applicant's/Claimant's representatives of its intention to survey and inspect the property. Instead, the Commission Staff chose to trespass upon the Applicant's/Claimant's property in an effort to collect evidence with no ability to determine where the various evidence was collected, or to verify the alleged locations. Such actions represent a pattern of oppressive conduct which denied the Applicant/Claimant of his right to a fair hearing.

It is respectfully requested that the Commission grant reconsideration of its denial.

Very truly yours,



William S. Walter

WSW:ckb
Enclosures

cc: Charles A. Pratt (w/enclosure via fax and U.S. Mail)
Ben Maddalena (w/enclosure via fax and U.S. Mail)
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