

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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Hearing Date: December 14-16, 2005

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-109

Applicant: Mr. & Mrs. Michael Perry Agent: Donald Grover

Description: Construction of a new 959 sq.ft. pool house with 235 sq.ft. basement/wine cellar; landscape and hardscape improvements, including installation of a vineyard, on a 2.86-acre lot with an existing 2-story, 5,493 sq.ft. single-family residence, pool and a 1,822 sq.ft. detached garage/maid's quarters.

Lot Area	2.86 acres
Building Coverage	7,301 sq. ft. (6%)
Pavement Coverage	10,235 sq. ft. (8%)
Landscape Coverage	26,412 sq. ft. (21%)
Unimproved Area	80,634 sq. ft. (65%)
Parking Spaces	4
Zoning	RR
Plan Designation	17
Ht abv fin grade	26.5 feet

Site: 3972 Stonebridge Court, Rancho Santa Fe, San Diego County.
APN 262-190-06.

Substantive File Documents: Certified County of San Diego Local Coastal; CDPs #6-83-314; #6-88-356.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending that the Commission deny the proposed pool house/wine cellar and landscaping, as it will result in impacts to visual and biological resources, inconsistent with the Chapter 3 policies of the Coastal Act. The proposed development is proposed adjacent to the existing residence on a steep slope overlooking San Elijo Lagoon. When the subdivision was originally approved, Special Conditions placed on the project prohibited development on the steep slopes identified on the subject site. The area was intended to remain as grasslands. The

hillside is highly visible, and encroachment into the steep slopes will degrade the quality of the natural lagoon environment. The project would also eliminate the existing grassland, which can serve as a foraging area for birds and insects. The proposed vineyard would also increase the potential for chemicals and sedimentation entering the lagoon. Therefore, staff recommends that the development application be denied.

Standard of Review: Chapter 3 polices of the Coastal Act, with the certified City of San Diego LCP used as guidance.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-04-109 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project is construction of a new 959 sq.ft. detached pool house with 235 sq.ft. basement/wine cellar on a 2.86-acre lot with an existing 2-story, 5,493 sq.ft. single-family residence and a 1,822 sq.ft. detached garage/maid's quarters. The project also includes landscaping and hardscape improvements around the existing residence, including installation of a vineyard.

The subject site is on the "inland" portion of the subdivision, not immediately adjacent to San Elijo Lagoon, on a mesa top overlooking the lagoon. The existing house is on the mesa top, and the site slopes down steeply to the north. There is a private street (Stonebridge Lane) and one row of residential parcels between the subject site and the lagoon.

The roughly rectangular-shaped lot is located on the north side Stonebridge Court, just west of El Camino Real, near the inland extent of San Elijo Lagoon and the floodplain of Escondido Creek in the Rancho Santa Fe community of San Diego County. The subject parcel was created through the subdivision of a larger 50-acre site approved by the Commission in 1983 (CDP #6-83-314/Manchester Estates) which created the subject Lot 6 and included the rough grading of portions of the overall site and construction and installation of roadways and utilities.

The subdivision was approved with a variety of special conditions designed to address future development of individual custom estate sites so as to avoid adverse impacts to the adjacent floodplain, downstream San Elijo Lagoon and the surrounding viewshed. The conditions prohibited any alteration of landforms, removal of vegetation or erection of structures within a minimum 100-foot setback from the southern property line adjoining the lagoon wetlands, without the approval of the Coastal Commission.

In addition, the original subdivision permit prohibited the grading or erection of any structures on slopes greater than 25% grade on certain lots, including the subject site. This condition was required to be recorded as a deed restriction to ensure that future property owners are aware of the restrictions. A slope analysis submitted by the applicant indicates that almost all of the proposed structure would be located on steep slopes (greater than 25% grade).

In September 1988, the Commission approved construction of a single-family residence and detached garage/maid's quarter on the site (CDP #6-88-356/Perry). At that time, the Commission found that encroachment into approximately 6.6% of the steep slopes on the upper, southern portion of the site next to Stonebridge Lane for construction of the residence would not have a significant adverse impact on the scenic quality of the area, as long as the project was conditioned to provide a landscape screen on the north and west sides of the structure.

In order to ensure that visual and biological resources on the site continued to be protected, a special condition was placed on the project stating "All subsequent development proposals, including grading and planting associated with creation of an orchard on a portion of the lot, shall be subject to separate review under the coastal development permit process." However, at this time, the entire northern, sloping portion of the site has been developed with a citrus grove. There is also a maintenance road located on the slope next to the citrus trees. The citrus grove is not in the location of the proposed development, and is not part of this project. This apparent violation of the Coastal Act is being pursued as a separate enforcement matter.

The Commission previously certified the County of San Diego Local Coastal Program (LCP); however, the County did not accept the suggested modifications and never assumed permit issuing authority. Therefore, the County LCP is not effectively certified, and Chapter 3 of the Coastal Act is the standard of review, with the County LCP used as guidance.

2. Visual Quality/Landform Alteration. Section 30251 of the Coastal 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...

The slope on which the development is located is visible from numerous trails located throughout the eastern side of the lagoon, and from Manchester Avenue, a major coastal access road. As noted above, when the original subdivision creating the project site was approved by the Commission, a deed restriction was placed on the property prohibiting grading or erection of any structures on slopes greater than 25% grade. The condition states:

9. Lot Development Restrictions. Prior to or concurrent with recordation of the final map, the applicant shall record the following restrictions, on each individual parcel specified, to run with the land free of prior encumbrances, except for tax liens, and in a manner approved by the Executive Director:

A. (Lots 5, 6, 7, 8 and 9). No grading or erection of any structures shall occur on slopes of greater than 25% grade except that filling of the eroded gullies shall be permitted for the purpose of landscaping and erosion control. [...]

The subject site is Lot 6. Lots 5-9 all contain northwest-facing slopes with the development located on up above on the southern, flat portions of the site. The intent of the grading restrictions placed on these lots was to concentrate development on the flat portion of the sites and thereby minimize landform alteration to preserve the scenic quality of the lagoon viewshed and the sensitive resources of the lagoon reserve.

In addition, as noted above, the County of San Diego LCP was certified by the Commission in 1985. Because the County never formally accepted the Commission's modifications, the LCP was never effectively certified. However, the Commission has continued to use the County's LCP as guidance in review of permit requests in the County. In response to the habitat protection policies of the Coastal Act and the need to preserve sensitive habitats and steep slopes, the County of San Diego developed the Coastal Resource Protection (CRP) overlay zone as part of its certified LCP. The CRP overlay, which regulates the development of naturally-vegetated slopes in excess of 25% grade, states, in part:

Steep slopes. No development, grading, planting, excavation, deposit of soil or other material, or removal of natural vegetation, except as may be necessary for fire safety or installation of utility lines, shall be permitted on steep natural slopes of 25% grade or greater...No alteration of such natural steep slopes shall be permitted in order to

obtain use of a property in excess of the minimum reasonable use. For purposes of this provision, the term “minimum reasonable use” shall mean a minimum of one (1) dwelling unit per acre. Any encroachment into steep slope areas over 25% shall not exceed 10% of the steep slope area over 25% grade.

The project site is located within the CRP overlay zone. The intent of the CRP’s restrictions on grading steep slopes is to minimize the visual impacts associated with such grading, to preserve the habitat values of significantly vegetated steep slopes areas, and to avoid the increased likelihood of erosion, runoff and sedimentation which can occur when steep slopes are graded. These concerns are addressed by eliminating or significantly reducing grading on steep slopes. While encroachments into steep slopes can be allowed in some instances, where there is the possibility to develop sites without such encroachments, they are to be avoided.

The proposed pool house would be located northeast of the existing residence. The applicant is proposing to plant an area around the residence with native vegetation, and plant a vineyard on the slopes beyond that. In addition, as noted above, the northern slopes of the property have been developed with citrus trees.

The area proposed for development was proposed and approved to remain as undeveloped steep grassy hillsides when both the subdivision and the residence were developed. Preservation of this natural landform provides a gradual visual transition from the open space lagoon reserve to the development along the ridgetops. The proposed project would reduce this transition area by pushing development area further north into the designated natural area. As noted, the subject site is visible from public trails and Manchester Avenue. The Commission previously allowed a minimal amount of encroachment into the steep slopes on the site for construction of the residence. The proposed encroachment into the natural landform would go beyond that previously approved encroachment, degrading the viewshed, in conflict with the intent of the Commission to minimize the impact that development on this site would have on the visual quality of the area. The project would also set an adverse precedent for developing and grading the natural steep landform and vegetation of the hillsides not only on this site, but also on the surrounding lots, which would cumulatively have a significant adverse impact on the visual quality of the area.

In addition, the Commission finds that there are feasible alternatives to the proposed project, which would eliminate its inconsistency with the Coastal Act policies. The site is currently developed with a 2-story, 5,493 sq.ft. single-family residence, a 1,822 sq.ft. detached garage/maid’s quarters, landscaping, and a pool. The no project alternative would still allow the applicant reasonable use of the site. Alternatively, although some redesign of existing structures on the site might be necessary, there is adequate room on the site to accommodate a redesigned pool house on the upper, flat portion of the site that would not require encroachment on steep slopes, and would not be visible from any public areas, consistent with the visual resource and landform alteration policies of the Coastal Act.

In summary, the proposed structure would alter the natural landform of the grassy steep slopes on the subject site and have an adverse visual impact on the surrounding lagoon viewshed inconsistent with the policies of the certified LCP and the Chapter 3 policies of the Coastal Act addressing the preservation of coastal scenic areas. There are feasible alternatives to the proposed project. Therefore, the Commission finds the permit application must be denied.

3. Environmentally Sensitive Habitat/ Runoff & Water Quality. Section 30231 of the Coastal Act is applicable to the proposed development and 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 Coastal Act is applicable and 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.

At the time the subdivision was approved, the area proposed for the pool house was identified as grasslands. The slopes adjacent to the subject site contained some coastal sage scrub. Although it appears that some landscaping has been done on this area of the lot, at the time the Commission approved both the subdivision and residence, the area proposed for the pool house was to remain in a natural undeveloped state.

The Commission's staff ecologist has reviewed the proposed project for construction of the pool house and vineyard on the grasslands and the biological surveys of the site submitted with the previous applications. His conclusions are that grassland provides foraging habitat for birds of prey; orchards and vineyards do not. The grassland may also provide upland foraging opportunities for insects that utilize both upland and wetland during various times in their life cycle. Orchards & vineyards typically require the use of chemicals as fertilizers and as pesticides & herbicides may be used also. These chemicals will be flushed into the lagoon. There may also be increased sedimentation associated with these agricultural activities.

The potential for these types of impacts is why the County LCP included the site in its CRP overlay, and why the Commission prohibited development of the steep slopes on the site in its approval of the subdivision, as described above. The subject proposal represents an incremental encroachment into an area that was intended to provide both a habitat area itself and a buffer between the development and lagoon, which would degrade the area and not be compatible with the nearby lagoon. In addition, were the proposed project approved, it would set a precedent for allowing development to encroach into the native habitat on adjacent lots, some of which contain coastal sage scrub habitat, an environmentally sensitive habitat area.

As noted above, the no project alternative would still allow the applicant reasonable use of the site. Furthermore, the pool house, if not the vineyard, could be redesigned to be located on the upper, flat portion of the site that would not require encroachment on steep slopes or native vegetation consistent with the visual resource and landform alteration policies of the Coastal Act.

In summary, the proposed structure and landscaping would directly impact grasslands which have both intrinsic habitat value and play a role in protecting and preserving the sensitive habitat of the adjacent lagoon, inconsistent with the environmentally sensitive habitat policies of the certified LCP and the Chapter 3 policies of the Coastal Act. There are feasible alternatives to the proposed project. Therefore, the Commission finds the permit application must be denied.

4. Unpermitted Development. Development has occurred on the subject site without the required coastal development permit, including, but not limited to, the removal of grassland habitat and construction of a citrus orchard in its place. Special conditions placed on the permit for construction of the residence on the subject site specifically required that “grading and planting associated with creation of an orchard on a portion of the lot, shall be subject to separate review under the coastal development permit process” (CDP #6-98-356/Perry). The citrus grove is not in the location of the proposed development, and is not part of this project.

Although development occurred subsequently to the submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

5. 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 cannot be made.

Based on the above discussion, the proposed development has been found to be inconsistent with the Chapter 3 policies of the Coastal Act requiring the protection and preservation of natural landforms, visual quality, sensitive biological resources and water quality. In addition to non-compliance with Chapter 3 policies of the Coastal Act, the subject proposal also does not comply with the existing LCP provisions cited above pertaining to preservation of steep slopes. The Commission finds that approval of the proposed development as proposed would prejudice the ability of the County of San Diego to prepare a Local Coastal Program that is in conformity with Chapter 3 policies. Therefore, it must be denied.

6. 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, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 effect which the activity may have on the environment.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available such as the no project alternative or relocation of the pool house that would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives which would lessen significant adverse impacts which the activity would have on the environment. Therefore, the project must be denied.