

CALIFORNIA COASTAL COMMISSION

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Filed: September 13, 2005
49th Day: November 1, 2005
180th Day: March 12, 2006
Staff: ALB-LB
Staff Report: November 22, 2005
Hearing Date: December 14-16, 2005
Commission Action:

W 5f**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-05-362

APPLICANT: John C. Caldiero

AGENT: Robert N. Ives, Esq.

PROJECT LOCATION: 314 Encino Lane, San Clemente, County of Orange

PROJECT DESCRIPTION: Relocation of 6-foot high chain link fence in coastal canyon

LOCAL APPROVAL RECEIVED: City of San Clemente Approval-In-Concept dated July 18, 2005.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to relocate an existing unpermitted 6-foot high chain link fence that currently encroaches into a coastal canyon.

Staff is recommending **APPROVAL** of the proposed project with five (5) special conditions regarding: 1) removal of fence; 2) revegetation of affected canyon area; 3) future development; 4) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report; and 5) timely completion of condition compliance.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente certified Land Use Plan (LUP).

LIST OF EXHIBITS

1. Location Map
2. Assessor's Parcel Map
3. Project Plans

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** 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 this permit is reported to the Commission. 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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.

III. SPECIAL CONDITIONS

1. Removal of Fence

Within sixty (60) days of issuance of the coastal development permit or within such additional time as the Executive Director may grant for good cause, the applicant shall remove the chain link fence encroaching within the 5-foot canyon edge setback and beyond the canyon edge as shown in concept on Exhibit 3 of the staff report dated November 22, 2005 on file and available from the Coastal Commission's office.

2. Revegetation

In the event that existing vegetation is disturbed during implementation of the project authorized by CDP 5-05-362, the applicant shall replant the affected canyon area with native, drought-tolerant, non-invasive plant species appropriate to the habitat type. PRIOR TO COMMENCEMENT OF ANY RE-VEGETATION, the applicant shall submit to the Executive Director for review and approval a re-vegetation plan prepared by a licensed landscape architect that includes, at minimum, a map showing the type, size, and location of all plant materials, any irrigation system (which, if any, shall be temporary and above-ground), topography of the site, and all other landscape features, and a schedule for installation of plants. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-362. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-05-362. Accordingly, any future improvements to the fence authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-362 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this

permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Condition Compliance

WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The project site is located within a coastal canyon on an approximately 10,000 square foot residential lot at 314 Encino Lane in the City of San Clemente, Orange County (Exhibits 1 & 2). The site is designated RM in the certified Land Use Plan (LUP) and is currently developed with a multi-family residential unit. The site is located within Palizada Canyon, designated as an environmentally sensitive habitat area (ESHA) in the City's certified LUP. Due to the presence of both native and non-native plant species, the canyon is considered a somewhat disturbed habitat area. Nevertheless, efforts must be made to improve the habitat value of the canyon and to prevent potential erosion.

The proposed project involves the relocation of an unpermitted 6-foot high chain link fence from a location beyond the canyon edge to a location conforming to the minimum 5-foot canyon edge setback typically imposed by the City and Coastal Commission for accessory improvements (Exhibit 3). As currently sited, the fence follows the side and rear property lines, which extend into and along the canyon bottom. The fence was initially installed in 2004 without benefit of local approval or a coastal development permit. When notified of the unpermitted canyon encroachment by the City of San Clemente, the applicant worked with City staff to relocate the fence.

The proposed project will remove the chain link fence from the canyon and reinstall it as much as 45 feet further streetward. In its new alignment, the fence will be set back at least 5 feet from the canyon edge. No vegetation removal is proposed. No staging of equipment or material will occur within the canyon. In the event that any vegetation is disturbed during relocation activities, the applicant must revegetate with native, drought-tolerant plant species. This is consistent with past Commission action and the City's certified LUP, which advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.caleppc.org/>) and California Native Plant Society (www.CNPS.org) in their publications.

Furthermore, any plants used should be drought tolerant to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

B. HABITAT

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. As such, the Commission retains permit issuance authority.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, 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.

H. Unpermitted Development

Development has occurred on site, including installation of a chain-link fence in a coastal canyon, without the benefit of the required coastal development permit. The applicant proposes as an element of this project the removal of the unpermitted fence. Although unpermitted development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.