

CALIFORNIA COASTAL COMMISSION

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Thu 9a

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Staff: EL-SD
Staff Report: December 28, 2005
Hearing Date: January 11-13, 2006

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-84-496-A1

Applicant: Dr. John Arnold

Agent: Patrick Banning

Original Description: Construction of a 1-story, 3,150 sq.ft. single-family residence.

Proposed Amendment: To encroach into the open space deed restricted area for construction of a swimming pool on the south side of the existing residence, and allow removal of vegetation in deed restricted open space to accommodate a 100-foot brush management zone.

Site: 4871 Rancho Viejo Drive, San Diego County. APN 302-222-11

Substantive File Documents: Original Permit and Staff Report for #6-84-496; Recorded Deed Restriction; Exemption #6-04-110-X

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: This amendment request is to allow development of a pool and complete brush management for fire safety within an area in which development is restricted pursuant to a recorded deed restriction required as part of the Commission's original approval of construction of the home on this site. The restriction placed all portions of the site south of the home in open space to protect steep slopes and native vegetation but provided for the possibility of future action by the Commission to allow development in that restricted area. Staff recommends that the Commission take one vote adopting a two-part resolution, which would approve portions of the development and deny other portions of the development.

Staff recommends the Commission **approve** the applicant's request to allow specific brush management operations within the open-space deed-restricted area. The brush management is required for an addition to the previously-approved residence. The addition is exempt from coastal development permit requirements. The proposed brush

management is acceptable in this location as it consists only of the removal of dead and dying native vegetation, and potential removal of non-native and invasive species.

Staff, recommends that the Commission **deny** the applicant's request to allow construction of a swimming pool behind the existing home within the previously required open space area. While the proposed pool would be built in an area devoid of native vegetation, it is proposed entirely on slopes at or exceeding 25% gradient.

Standard of Review: The County of San Diego does not have a certified local coastal program. Therefore, the standard of review is the policies listed in Chapter 3 of the Coastal Act.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following two-part resolution. The motion passes only by an affirmative vote of a majority of the Commissioners present.

MOTION: *I move that the Commission adopt the staff recommendation to approve in part and deny in part Coastal Development Permit Amendment No. 6-84-496-A1, with the approval subject to the conditions recommended by staff, by adopting the two-part resolution set forth in the staff report.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment in part, as conditioned, denial of the permit amendment in part, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **GRANTS, as conditioned**, a coastal development permit amendment for the portion of the project consisting of specific brush management operations within deed restricted open space pursuant to the site plans received 11/29/05 and the December 22, 2005 electronic message from the Fire Marshal, 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, 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, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development

The Commission hereby **DENIES** a coastal development permit amendment for the portion of the project consisting of construction of a swimming pool within the previously required deed restricted open space, and adopts the findings set forth below, on the grounds that this development would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would prejudice the ability of the local government having jurisdiction of the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions.

The permit amendment is subject to the following conditions:

1. Add the following Special Condition to the list of Special Conditions applicable to the permit, as amended:

4. Final Brush Management Plans. PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 6-84-496-A1, the applicant shall submit to the Executive Director for review and written approval, revised detailed brush management plans addressing the area within 100 feet of the basement-level, exempt residence additions. Said plans shall be approved by the Rancho Santa Fe Fire Department and shall include the following:

- (a) Within the open space area of the subject property that lies between 0 and 50 ft. from the basement additions (Fuel Modification Zone 1) as shown on the plan by MOA, Inc. dated-stamped received by the Coastal Commission's San Diego office on November 29, 2005 and attached as Exhibit #2 to this staff report, the plans shall identify that only native, fire-resistant, irrigated vegetation may be present. No invasive species are permitted.
- (b). Within the open space area of the subject property that lies between 50 and 100 ft. from the basement additions (Fuel Modification Zone 2) as shown on the plan by MOA, Inc. referenced in the prior paragraph, the plans shall note that only dead and dying plant material shall be removed or cut. No clear cut, grubbing (removal of roots below the soil surface) or trimming of living plants shall occur, and no irrigation is permitted.
- (c). A licensed biologist shall be present during the brush management operation to assure that no work occurs if California Gnatcatchers are present, and that all work is in accordance with the approved plan. If it is determined that Gnatcatchers are present, brush management work shall be postponed until the biologist determines that no Gnatcatchers are present.

(d). The property owner shall be responsible for at least annual maintenance within the designated 100 ft. brush management area to remove any introduced non-native or invasive plant species.

(e). Any future brush clearance within the designated 100 ft. brush management area, other than removal of invasive and non-native plant species and removal of dead and dying plants shall require approval of a coastal development permit or amendment to the subject permit, unless the Executive Director determines no permit or amendment is legally required.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved brush management plan should be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Prior Conditions of Approval. All other terms and conditions of the original approval of Coastal Development Permit #6-84-496 not specifically modified herein, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The Commission first acted on a development proposal at the subject site in 1984, when it approved construction of a one-story, 3,150 sq.ft. single-family home with a septic system and a front yard swimming pool. The site is flat adjacent to the street, where the existing pool, septic improvements, and portions of the home are located, but part of the home is supported by posts where the slopes begin. The property then drops steeply off into an inland canyon somewhat south of the house. To protect those steep slopes, the Commission's approval included several special conditions, one requiring the recordation of an open space deed restriction over all portions of the site south of the approved residence.

The subject property is located within the unincorporated County of San Diego, east of Solana Beach and north of Via de la Valle in what is called the Sun Valley subdivision. The subject amendment application involves two separate proposals involving the deed-restricted open space area of the site. Initially, the applicant proposed to amend the permit to allow construction of a zero edge swimming pool and overflow basin within the deed restricted open space area. The proposed pool would measure a maximum 74 feet in length and a maximum 16 feet in width, with a 6-foot retaining wall on the south side of the pool itself, and an 8-foot retaining wall for the overflow basin. Patio improvements would fill the approximately 8-foot-wide area between the house and pool, and a 3-foot-wide walkway would extend around the south rim of the pool.

When it was learned that brush management operations within the open space would be required for a separate, exempt home addition, the amendment request was formally expanded to include that feature. The Rancho Santa Fe Fire Department is requiring a 100-foot brush management zone, including 50 feet nearest the house to be landscaped and irrigated with non-flammable materials, and dead and dying native materials to be removed in the 50-100 foot area. Since the County of San Diego does not have an effectively certified Local Coastal Program (LCP), the standard of review for the proposed amendments is the Chapter 3 policies of the Coastal Act.

A. APPROVAL FINDINGS AND DECLARATIONS

The findings in this section apply only to that portion of the development that is described in Part 1 of the Commission's resolution on this permit application, which portion is therefore being conditionally approved.

1. Environmentally Sensitive Habitat Area. Section 30240 of the Coastal Act is most applicable to this proposed amendment and states, in part:

(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.

The project site consists of the residence constructed under the original permit, a lap pool in the front yard area also constructed at that time, and landscaping improvements on the flatter portion of the site and the upper canyon slopes closest to the house on the southern side. No biological resources were identified or addressed in the original approval, which established the open space area based only on steep slope concerns. No formal biological survey has thus been conducted on this site. However, those areas of the open space within 50 feet of the residence contain gentler slopes (still at or greater than 25% gradient) and are vegetated only with iceplant, eucalyptus trees and other non-native/exotic/ornamental species. Beyond approximately 50 feet south of the existing residence, the slopes drop off much more steeply, and the canyon walls appear to be vegetated with native habitat (either coastal sage or chaparral vegetation).

Although the house is only one story, it is on a sloping site and has a walk-out basement/patio area. The exempt house additions/improvements would fully enclose that lower area of the existing residence, creating new living space underneath the existing home. In 1984, brush management was not an identified issue for development adjacent to habitat and open space, nor were inland slope setbacks a major issue. Thus, the original home was sited on slopes, although north of the steepest slopes on site, adjacent to natural undisturbed landforms, with a large setback from the street to accommodate the septic system seepage pits and a swimming pool. The exempt home additions will not occur within the deed restricted area, nor will they be located any closer to it than the existing house.

Planning issues and concerns, however, have changed since 1984, such that brush management restrictions are now placed on new development sited in sensitive locations such as the subject site, and increased setbacks from native habitat are typically required. Thus, the Fire Marshal is requiring brush management measures for the new home improvements. Under existing state law, it is possible such measures could also be required for the existing structure, although the Fire Department has not taken that position to date. However, any brush management activities proposed for this site would occur within the deed restricted open space area and require an amendment to the subject permit.

Again, brush management requirements consist of two zones totaling 100 feet. The existing area within 50 feet of the house is already irrigated and does not contain any native vegetation at this time. South of this area, within the more steeply sloping portion of the site, native vegetation appears to dominate, although some exotics are present in that part of the site as well. The Rancho Santa Fe Fire Department has determined that to meet fire safety requirements, only fire-resistant, native and irrigated vegetation may be present within Brush Management Zone 1 (first 50 ft. from the home). Within Brush Management Zone 2 (50-100 ft. from home), the Fire Department has determined that the removal of dead and dying vegetation will adequately reduce fire risks to the house, and all living native vegetation can remain. Special Condition #4 requires the applicant to implement these brush management requirements and that any future brush management on the property will require approval by the Commission prior to commencement. In addition, the brush management program shall include a requirement that a licensed biologist be present during brush management activity to assure the activities are consistent with the approved plan and that the California Gnatcatchers are not present. If it is determined that Gnatcatchers are present, brush management work must cease, until the biologist determines they are no longer present. Further, the condition requires the property owner to maintain the brush management area and avoid introduction of non-native or invasive species that may increase the fuel load. In this way, the potential for adverse impacts to environmentally sensitive habitat will be reduced to the maximum extent possible. As conditioned, the proposed brush management for fire safety will not result in impacts to any native or sensitive habitat areas.

In summary, brush management is being required in conjunction with an exempt home addition. Since the area in question is within an existing deed restricted open space area that does not allow any removal of vegetation without approval of the Coastal Commission, the applicant has proposed the subject amendment request to do minimal brush management activities within the open space area. A special condition addresses submittal of a final brush management plan; also Special Condition #2 advises the applicant that all conditions of the original permit remain in full force and effect. With these conditions, the Commission finds the proposed amendment consistent with the cited Chapter 3 policy of the Coastal Act.

2. Visual Resources. The following Coastal Act policy is most applicable to the proposed amendment, and states, in part:

Section 30251

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 subject site is a sloping lot extending from street level down to the bottom of an inland canyon. The existing house sits on the highest portion of the site, with the open space beginning adjacent to, and south of, the house and extending down the canyon wall. The surrounding properties are similar in nature and are developed in the same manner. The area where brush management activities would occur is not particularly visible from any public vantage point, due to distance, the angle of the canyon, and intervening vegetation. Moreover, the minimal nature of the brush management activities approved herein will not change the overall appearance of the area. Therefore, the Commission finds the proposed brush management program is fully consistent with Section 30251 of the Coastal 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.

The subject site is within the unincorporated area of the County of San Diego. Although a LUP and IP were conditionally certified by the Coastal Commission in the 1980's, effective certification and a transfer of permit authority never occurred. Therefore, the Coastal Act remains the legal standard of review. As conditioned, the project is consistent with all cited Coastal Act policies. Therefore, the Commission finds that approval of the proposed brush management activities, as conditioned, will not prejudice the ability of the County of San Diego to create a fully-certifiable LCP.

4. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's 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.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing the brush management program, 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 project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

B. DENIAL FINDINGS AND DECLARATIONS

The findings in this section apply only to that portion of the proposed development that is described in Part 2 of the Commission's resolution on this permit application, which portion is therefore being denied.

1. Hazards/Steep Slopes/Water Quality/Views. The following Coastal Act policies are most applicable to the proposed amendment, and state, in part:

Section 30231

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.

Section 30251

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. ...

Section 30253

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding

area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. ...

The applicant is proposing construction of a swimming pool within the deed-restricted open space portion of the site. The construction would involve excavation of soils (i.e., alteration of landforms) and installation of retaining walls to support the proposed lap pool facility. Although the area closest to the house, where the pool is proposed to be sited, is less steep than the portion of the site farther south, the gradient still is at, or exceeding, 25% in most locations. The deed restriction was placed on the property for the specific purpose of protecting steep slopes from landform alteration, removal of vegetation, and the erection of structures. Some encroachment into greater than 25% slopes was permitted in the original permit for the house itself, but that encroachment was found to be offset by retention of some less steep areas at the base of the canyon in permanent open space.

The project site is located within the Coastal Resource Protection (CRP) overlay zone of the County of San Diego LCP. The CRP overlay zone was developed as part of the County LCP in response to the habitat protection policies of the Coastal Act and the need to preserve environmentally sensitive habitats and steep slopes. Because the County did not receive approval of its LCP by the Commission, 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. 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 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 or the removal of vegetation.

Construction of a lap pool would be inconsistent with all those parameters, and with the cited Coastal Act policy as well, as the required excavation could result in erosion or geologic instability. The pool would require creation of a level area and use of retaining walls. A pool is an optional, accessory feature not vital to the maintenance or operation of a single-family residence. The pool and associated patio would increase the amount of impervious surfaces on the site, such that drainage issues may be raised, particularly as

this part of the site already drains down into the canyon over very steep slopes rather than into an existing stormdrain system. Moreover, the applicant already has a similar pool structure in front of the house on the flattest portion of the site.

In addition, the proposed pool would be sited on the upper portions of the canyon slopes. As discussed in the previous findings for approval of the brush management program, this site is not particularly visible and is very distant from public areas. However, even though the subject site is not highly visible from offsite public vantages, the proposed pool, patio and associated retaining walls to be constructed on the face of the steep slope area, would be visible from offsite public vantages. In addition, cumulatively, if other pools and other accessory improvements are permitted on steep sloping areas, this would result in a significant visual impact. This is why the CRP provisions of the County LCP prohibited alteration of landforms for such structures on slopes in excess of 25% grade. Additionally, approving a pool in this location could set an adverse precedent which could result in significant view impacts in other cases, even on properties in this general vicinity.

In summary, the Commission, in 1984, required the open space restrictions to protect the steep slopes on this site. These restrictions are no less necessary now than they were then. Also, since 1984, water quality and runoff issues and protection of visual amenities have taken greater precedence in Commission decisions. Construction of a pool in the proposed location would have adverse impacts on all the identified coastal resources, as well as being inconsistent with the existing open space deed restriction. Therefore, the Commission now denies the request to allow the proposed pool in the deed restricted open space area.

2. 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 construction of a swimming pool on steep slopes has been found to be inconsistent with the site stability/erosion control policies of the Coastal Act. Excavation could destabilize the soils, and both the construction activities and the increased impermeable surfaces would increase runoff into the natively-vegetated lower canyon slopes. Therefore, the Commission finds that approval of the proposed project will prejudice the ability of the County of San Diego to prepare a Local Coastal Program that is in conformity with Chapter 3 policies and, therefore, it must be denied.

3. California Environmental Quality Act (CEQA). Section 13096 of the Commission's 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)(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 that 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 that would substantially lessen any significant adverse impacts that the activity may have on the environment such as siting a pool on slopes less than 25% in grade. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, that would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.