

CALIFORNIA COASTAL COMMISSION

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W8b



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APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal numberA-3-SCO-06-059, Collins Single Family Residence
ApplicantsMichael & Deborah Collins
AppellantsAlbert & Joel Schreck; Robert & Mitzie Forsland
Local governmentCounty of Santa Cruz
Local decisionApproved with Conditions on September 26, 2006
Project location548 Beach Drive (inland side of Beach Drive) in unincorporated Aptos, Santa Cruz County (APN 043-152-71).
Project descriptionConstruct a three-story, approximately 5,800 square foot single-family dwelling, involving approximately 1,250 cubic yards of grading.
File documents.....County of Santa Cruz Certified Local Coastal Program, County of Santa Cruz Coastal Development Permit Application File 04-0255.
Staff recommendation ...No Substantial Issue

Summary of Staff Recommendation: This is the substantial issue determination for appeal number A-3-SCO-06-059, regarding Santa Cruz County’s conditional approval of a new three-story, approximately 5,800 square foot single-family dwelling and associated grading on an extremely steep vacant residential parcel on the inland side of Beach Drive, in unincorporated Aptos in Santa Cruz County. This shoreline area has been largely developed with single-family residences, despite significant erosion and landslide hazards attributable to the fact many parcels are located on or seaward of an eroding coastal bluff. To address landslide hazards, the County requires, among other things, that new homes and significant remodels avoid habitable living space and provide “break away” walls on the ground floor. In light of this requirement and the presence of many other three-story structures in the area, and in the interest of minimizing the amount of grading that would be required to accommodate a wider rather than taller structure, the County granted a variance to the LCP height limit of two stories, as it has done for other similarly situated parcels in the recent past.

The appellants contend that the proposed development poses an imminent threat to the health, safety, and welfare of persons nearby because of the slope of the bluff, the length of cut that will be required for construction, and the roof design. Additionally, the appellants contend that the approved development



California Coastal Commission
December 2006 Meeting in San Francisco

Staff: Susan Craig Approved by:

does not comply with Land Use Plan Section 6.2.10, which requires that development be sited to avoid or minimize hazards. Also, the appellants contend that the approved project will have negative impacts on the existing drainage system. The approved project, however, includes extensive mitigations, including the use of a design to both support the slope and bear the impact and weight of a major landslide, earthquake, or flooding without collapse or structural failure. The reinforced design will also stabilize the lower part of the slope, which should decrease the amount of danger to beachside residences, road, or other infrastructure during an upper slope failure. Additionally, the County conditioned the project to require an engineered drainage plan. Thus, the approved project has been designed to minimize hazards, in conformity with the requirements of LUP policy 6.2.10.

The appellants also contend that the size and scale of the project is not compatible with neighboring development along Beach Drive. However, the County-approved project is not atypical of the size and scale of development along this stretch of Beach Drive, especially given the large size of the parcel. Also, the project conforms to the zoning code requirements regarding lot coverage and floor area ratio. Therefore, staff recommends that the Commission find that the appeal does not raise a substantial issue regarding the consistency of the County’s approval with the certified LCP, and thereby decline to take jurisdiction over the coastal development permit.

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1. Appeal of County of Santa Cruz Decision

A. Local Government Action

The Santa Cruz County Planning Commission first heard the project on April 12, 2006 and continued the project to the May 10, 2006 agenda to allow the applicants to conduct a neighborhood meeting and to ensure that representatives from the Department of Public Works Storm Water Management Section and the applicants' engineer would be present. After hearing the results of the neighborhood meeting and other technical information, the Planning Commission voted to deny the application and directed staff to prepare findings for denial that were subsequently adopted on June 28, 2006. The Planning Commission based the denial on health and safety concerns due to the location of the residence in an area subject to landslide hazards at the toe of a coastal bluff. On July 11, 2006, the applicant appealed this decision to the Board of Supervisors. On August 22, 2006, the Board of Supervisors voted to take jurisdiction of the project and to schedule the project for a public hearing.

On September 26, 2006 the Santa Cruz County Board of Supervisors overturned the Planning Commission's denial and approved the project based on the recommended findings and conditions presented to the Planning Commission at the April 12, 2006 hearing, with two additional conditions of approval (Special Conditions III. I and J. A full set of the County's findings and conditions of approval are attached to this report as Exhibit 2). Notice of the final County action on the Coastal Development Permit was received in the Coastal Commission's Central Coast District Office on October 2, 2006. The Commission's ten-working day appeal period for this action began on October 3, 2006 and concluded at 5:00 P.M. on October 17, 2006. A valid appeal by Albert and Joel Schreck and Robert and Mitzie Forsland (Exhibit #3) was received during the appeal period.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the sea and the first public road paralleling the sea and because it is located within 300 feet of a coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo*



hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea, and thus this additional finding would need to be made in a *de novo* review in this case.

Pursuant to Section 30261 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day from the appeal filing date was December 5, 2006. On October 24, 2006 the applicants' representative waived the applicants' right for a hearing to be set within the 49-day period, to allow Commission staff sufficient time to review the project information and the appellants' contentions.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants (or their representatives), persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

C. Appellants' Contentions

In summary, the appellants' main contentions are that the project does not conform to LCP development standards regarding geology and hazards and that the development poses significant threat of harm to the public, the neighboring properties, and rescue service crews involved in the event of major earth movement from a landslide or an earthquake. Additionally, the appellants contend that the approved project is incompatible with other homes on Beach Drive due to its size and scale and that the approved project will negatively impact the drainage system on Beach Drive. Please see Exhibit #3 for the appellants' complete appeal document.

2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. I move that the Commission determine that Appeal Number A-3-SCO-06-059 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue. Staff recommends a **yes** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the



application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue. The Commission hereby finds that Appeal Number A-3-SCO-06-059 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location

The approved project site is located at a vacant parcel on the bluff side of the private section of Beach Drive in Aptos. The property is steeply sloped, with the entire site consisting of a slope ranging from 50% to over 70%. A line of mostly one-story homes exists on the ocean side of Beach Drive, between the approved project site and the beach. There are 15 existing homes on the bluff side of this portion of Beach Drive, 11 of which are three stories. The approved project is also located within FEMA Flood Zone V, a 100-year coastal flood hazard zone designated for areas subject to inundation resulting from wave run-up and storm surges. Please see Exhibit #1 for project location map and Exhibit #4 for six photographs of this section of Beach Drive.

B. County Approved Project

The County of Santa Cruz approved a coastal development permit to construct an approximately 5,800 square foot, three-story house at 548 Beach Drive in Aptos. The residence will be constructed using reinforced concrete, and has been designed and engineered to withstand the impact of any expected landslides. For example, the sides of the approved structure are designed as retaining walls to prevent damage by landslide flows along the side yards. The approved project includes approximately 1,250 cubic yards of grading, due to the steeply sloped nature of the project site. The lowest habitable floor of the approved dwelling is located above the 21-foot mean sea level, which is above FEMA's expected 100-year wave impact height. The first floor of the approved project consists of a non-habitable five-car garage. The garage doors and non-load bearing walls are designed to function as "breakaway" walls, as required by the FEMA regulations for development in FEMA Flood Zone V. Please see Exhibit #5 for approved project plans.

4. Substantial Issue Analysis and Findings

Section 30603(b)(1) of the Coastal Act states:



The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

The contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP.

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP, and;
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises determines that the development as approved by the County does not present a substantial issue.

A. Geologic Hazards/Drainage Issues

The appellants cite Santa Cruz County Land Use Plan (LUP) Policy 6.2.10, which states:

6.2.10. Site Development to Minimize Hazards

Require all developments to be sited and designed to avoid or minimize hazards as determined



by the geologic hazards assessment or geologic engineering investigations.

The appeal contends that the development poses an imminent threat to the health, safety, and welfare of persons nearby because it is located on a steep and unstable bluff and will exacerbate landslide hazards. The appeal also contends that the project does not comply with Land Use Plan Section 6.2.10, which requires that development be sited to avoid or minimize hazards. In support of these contentions, the appeal cites the findings of a certified engineering geologist that conclude the project will result in unsafe conditions for a variety of reasons, including its impacts on road access and fire hazards. Please see Exhibit #3 for the full text of the appellants' contentions.

Beach Drive in Aptos consists of dozens of parcels that were created prior to passage of the Coastal Act in 1972 (see Exhibit #4 for six photos of the portion of Beach Drive on which the project site is located). More than 75 of these parcels have been developed. Over the years, this area of the coast has been subjected to landslides, storm surge, and wave run-up that has damaged or destroyed homes (see Exhibit #3, pages 21-26 for photos of damage). In response to the hazardous conditions found along Beach Drive, the County has required that any new residential development or redevelopment along the inland side of Beach Drive be constructed to the same standards as the approved project. As of this date, eight dwellings of this type of reinforced construction have been approved on the inland side of Beach Drive; three of these approved houses have been constructed and several more are currently under construction.

The Commission's staff geologist visited the site on November 16, 2006 and has analyzed the geotechnical documents contained in the County's record in a memorandum attached to this report as Exhibit #7. The Commission's staff engineer also reviewed the technical documents relating to the project, as well as oblique aerial photographs of Beach Drive available on the California Coastal Records Project web site¹, and has provided an engineering analysis that is attached as Exhibit #8.

Both memorandums state that there is no question that the development along Beach Drive is subject to an unusually high number of geologic and other hazards, and is a challenging place to establish safe development. The Commission's staff geologist concludes, however, that the applicants' geologist and engineers have mitigated these hazards in a number of ways, such as by elevating the habitable space above the FEMA-defined 100-year flood elevation, and designing the structure to survive impact and burial by debris flows and landslides. This design will lend increased stability to the hillside, and thereby decrease the risk to the nearby homes by reducing the amount of sediment that could be released by a landslide. This will also help avoid road closures and associated fire risks.

Similarly, the appeal accurately points out that the site is unstable or only marginally stable and will undoubtedly suffer slope failures in the future. This contention does not, however, raise a substantial issue because the County-approved structure has been designed to avoid and minimize the hazards associated with such slope failures consistent with LCP requirements. Specifically, the Commission's staff engineer's memorandum (Exhibit #8) notes that the level of risk posed by the site is reflected in the 39 recommendations that are included in the project's Geotechnical Report and in the 8

¹ <http://www.californiacoastline.org/>



recommendations that are included in the project's Geologic Investigation. The Special Conditions of the County's approval require that the final plans reference and incorporate all these recommendations (see Exhibit #2). Thus, the engineering technical memorandum concludes that although the approved development will not be safe from all hazards, it should be able to withstand the foreseeable threats from landslides, earthquakes, and flooding without collapse or structural failure.

With respect to the accuracy of the geotechnical information provided by the applicant, the appellants' geologist contends that the bluff materials were not correctly identified, and that the resultant slope stability analyses is therefore suspect (Exhibit #3, page 18). However, from the perspective of the Commission's staff geologist, appropriate strength and stability parameters have been applied based on the materials described in the geologic borings (see Exhibit #7, page 4).

The appeal also contends that the slope failures may run out around the approved structure and impact other structures or persons on the road below (see Exhibit #3 pages 27 and 28). The appeal further asserts that the 3-½ foot tall landslide containment wall on the roof may be impacted by landslide debris, resulting in possible structural damage and deflection of debris during large-scale slope failures. The Commission's staff geologist has evaluated these concerns, and concurs with the applicants' geologist and engineers that the landslide containment wall on the roof will be mostly effective in smaller debris flow and slide events and will prevent material from covering the roof in small events. For larger debris flows, the 25-foot side yard setbacks should provide adequate area for the dispersal of landslide debris and thereby limit debris flow impacts to the road and nearby houses.

An additional concern raised by the appeal is the potential for the project will destabilize the bluff, due to the length of the cut needed to construct the shoring and the rear wall. Although the process of excavation does have the potential to destabilize the slope, the project includes appropriate precautions that the Commission's staff geologist found to be adequate (Exhibit #7, page 6). These include excavating the back-cut from the top down in 5-foot increments during dry-weather conditions, and ensuring that tiebacks are installed and tensioned prior to excavating the 5-foot increments. As noted by the Commission's staff engineer in Exhibit #8, the County required that the recommendations of the Geotechnical Report and Geologic Investigation be incorporated into the project (see Exhibit #2 for Special Conditions), which should enable the approved development to withstand the foreseeable threats from landslides, earthquakes, and flooding without collapse or structural failure

Finally, the appellants contend that the approved project does not adequately provide for drainage because it will displace significant rain flow to an inadequate drainage system on Beach Drive. The appellants do not cite any applicable LCP policies regarding drainage. Land Use Plan Policy 5.4.14 states:

5.4.14 Water Pollution from Urban Runoff:

Review proposed development projects for their potential to contribute to water pollution via increased storm water runoff. Utilize erosion control measures, on-site detention, and other appropriate storm water best management practices to reduce pollution from urban runoff.

As approved by Santa Cruz County, the project is required to provide a detailed erosion control plan,



along with an engineered drainage plan. Implementation of these conditions should ensure appropriate erosion control and storm water management, and avoid impacts to the existing storm drain system on Beach Drive, consistent with LUP Policy 5.4.14. The existing storm drain system empties onto the sand below the existing houses on the ocean side of Beach Drive, which are raised above the sand on piers.

In summary, the approved project includes extensive mitigations, including the use of a design to both support the slope and bear the impact and weight of a major landslide, earthquake, or flooding without collapse or structural failure. The reinforced design will also stabilize the lower part of the slope, which should decrease the amount of danger to beachside residences, road, or other infrastructure during an upper slope failure. Thus, the approved project has been designed to minimize hazards, in conformity with the requirements of LUP policy 6.2.10. The project has also been conditioned to provide erosion control and drainage plans necessary to carry out LIP Policy 5.4.14. Therefore, the appeal does not raise a substantial issue regarding the conformity of the approved development with the geologic hazards or drainage policies of the Santa Cruz County certified LCP.

B. Neighborhood Compatibility

The LCP requires visual compatibility. For example, LCP Section 13.20.130(b)(1) states:

Visual Compatibility. All new development shall be sited, designed, and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

The appellants contend that the size and scale of the project is not compatible with neighboring development along Beach Drive (see Exhibit #3 page 9 for this contention). However, a number of recently approved developments along Beach Drive have been in the 5,000 square foot range (e.g., 531 Beach Drive (an ocean side parcel), as well as a residence currently under construction at the end of Beach Drive). In addition, a cursory review of other new residences approved on Beach Drive in the past five years found that many of these approved residences were between 3,000 and 4,000 square feet in size on relatively small lots ranging from 5,025 square feet to 8,120 square feet in size.² The approved residence is approximately 5,800 square feet on an almost 13,000 square foot lot (see Exhibit #6 for lot configuration; see also Exhibit #4 for six photos of this section of Beach Drive). Thus, although the approved structure will be larger than some of the adjacent residences, its size is proportional to the large size of the lot. Additionally, the approved project complies with the certified zoning code standards for floor area ratio and lot coverage (see Exhibit #2, page 3). The mass of the residence will be broken up by stepping back each of the three levels to be flush with the bluff (see Exhibit #5 for project plans). The project will not block public views of the beach or ocean.

However, a potential compatibility issue is raised by the fact that the County approved the applicant's

² APN 043-161-55: parcel 6,518 sf; approved residence 3,248 sf
APN 043-161-54: parcel 6,538 sf; approved residence 3,217 sf
APN 043-161-43: parcel 8,120 sf; approved residence 3,791 sf
APN 043-095-11: parcel 6,960 sf; approved residence 3,242 sf



request a variance to allow a three-story residence at the site (the LCP maximum is two stories on the inland side of Beach Drive). The applicant requested this variance in order to account for the limitations on the use of the first floor required by FEMA regulations described above, and to avoid the additional grading that would be required to accommodate a larger second story. The County's analysis of this requests states in part:

“The steep topography of the site and the FEMA restrictions present special circumstances inherent to the property that would deny the property a reasonably sized dwelling as enjoyed by residents of similar structures on the bluff side of Beach Drive. Many homes along the bluff side of Beach Drive already have three stories, including the house at 641 Beach Drive and the dwellings approved on adjacent lots. For this reason, the granting of a variance to allow three stories will not constitute the granting of special privileges.”

As noted above, this project is not atypical of the size and scale of development along this stretch of Beach Drive, especially given the large size of the parcel. The project conforms to the zoning code requirements regarding lot coverage and floor area ratio. Thus, the approved project is substantially consistent with neighboring development along Beach Drive, and will not impair public views of the coast. Therefore this issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP. However, the use of a variance to allow development in excess of LCP height limits does raise a procedural concern, because the issuance of such variances in this area appears to becoming more of the norm rather than a method to address special circumstances. For this reason, the County is strongly encouraged to consider submitting an amendment to the existing two-story height limit applicable to this area before it approves additional variances to this standard.

C. Other Contentions

The appellants also contend that the approved project places an undue burden on the governing body due to maintenance requirements, emergency response, and risk of litigation (see Exhibit #3, page 19). In approving the project, the County of Santa Cruz, has accepted responsibility regarding these contentions. These contentions do not raise an issue of consistency with the LCP.

