

CALIFORNIA COASTAL COMMISSION

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Filed: June 14, 2007
49th Day: August 2, 2007
180th Day: N/A
Staff: Fernie Sy-LB
Staff Report: June 21, 2007
Hearing Date: July 9-13, 2007
Commission Action:

**STAFF REPORT: APPEAL**
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Dana Point

LOCAL DECISION: Approval with Special Conditions

APPEAL NUMBER: A-5-DPT-07-204

APPLICANT: Craig Smith

AGENT: Polster + Associates, Attn: Lance Polster

APPELLANTS: Coastal Commissioners Wan & Burke

PROJECT LOCATION: No situs address (APN NO. 691-182-21), Dana Point (Orange County)

PROJECT DESCRIPTION: Construction of a new 3,114 square foot, two story single-family residence with a 515 square foot attached two-car garage and associated improvements within the required bluff edge setback on a 10,737 square foot vacant coastal bluff lot. The dwelling meets front and side-yard setbacks of the RSF 3 Zoning District, but does not meet the 40-foot bluff edge setback required for bluffs in the Capistrano Beach area. The project also proposes retaining walls as high as 5.5 feet and total wall heights as high as 8.5 feet.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission **open and continue** the public hearing to determine whether a substantial issue exists as to conformity with the Chapter 3 policies of the Coastal Act for the reason set forth below. **See Page Two for the motion.**

Pursuant to Section 30621 of the Coastal Act, a hearing on a coastal development permit appeal shall be set no later than 49-days after the date on which the appeal is filed with the Commission. An appeal of the above-described decision was filed on June 14, 2007. The 49th day falls on August 2, 2007. The only Coastal Commission meeting scheduled between the date the appeal was filed and the 49-day limit is the July 9-13, 2007 meeting in San Luis Obispo.

In accordance with Section 13112 of Title 14 of the California Code of Regulations, staff requested on June 15, 2007 that the City of Dana Point forward all relevant documents and materials regarding the subject permit to the Commission's South Coast District office in Long Beach. The documents and materials relating to the City's approval of the project are necessary to analyze the project's consistency with the Coastal Act and the certified Local Coastal Program (LCP) in relation to the grounds of the appeal.

In order to be ready for the Commission's meeting, the staff report and recommendation for the appeal would have to be completed by June 21, 2007. As of June 21, 2007, the City's documents and materials relating to the local approval have not been received in the Commission's Long Beach office. Therefore, it is not possible to thoroughly analyze the appealed project and City approval in time to prepare a staff recommendation in time for the Commission's July 2007 meeting in San Luis Obispo.

Therefore, pursuant to Section 13112 of the California Code of Regulations, the staff recommends that the Commission open and continue the Substantial Issue Hearing at the July 2007 meeting in San Luis Obispo.

Section 13112 of Title 14 of the California Code of Regulations (Effect of Appeal) states:

(a) Upon receipt in the Commission office of a timely appeal by a qualified appellant, the executive director of the Commission shall notify the permit applicant and the affected local government that the operation and effect of the development permit has been stayed pending Commission action on the appeal by the Commission as required by Public Resources Code Section 30623. Upon receipt of a Notice of Appeal the local government shall refrain from issuing a development permit for the proposed development and shall, within five (5) working days, deliver to the executive director all relevant documents and materials used by the local government in its consideration of the coastal development permit application. If the Commission fails to receive the documents and materials, the Commission shall set the matter for hearing and the hearing shall be left open until all relevant materials are received.

As required by the above stated regulation, the Substantial Issue Hearing will be reopened at a subsequent Commission hearing after staff fully analyzes the local approval of the appealed project.

Staff recommends a **YES** vote on the following motion:

MOTION: *"I move that the Commission open and continue the public hearing for Appeal A-5-DPT-07-204 pursuant to the staff recommendation."*

Passage of this motion will open the public hearing for Appeal A-5-DPT-07-204 and continue the public hearing to a subsequent Commission hearing. The motion passes only by affirmative vote of the majority of the Commissioners present.

Resolution to Open and Continue the Public Hearing

The Commission hereby opens and continues the public hearing for Appeal A-5-DPT-07-204.