

DISCUSSION

Introduction

The Vardell Living Trust dated May 31, 2002, with Thomas A. and Andrea M. Vardell, as Trustees, is the owner of the “Vardell Property” which is located within the Santa Lucia Preserve, within the County of Monterey. The Vardell property is comprised of land from two (2) former parcels, the “Original Lot 65” (former APN 239-061-003) and the “Former Golf Club Lands” (a portion of former APN 239-091-085). The “Former Golf Club Lands” now comprises a 7.92 acre portion of “Lot 65”, shown and designated “Portion of Lot 65 (Parcel 2) from Volume 30 Surveys, Page 70” (**Attachment I**). The total acreage of the two former parcels (“Original Lot 65” and “Former Golf Club Lands”) known as the “Vardell Property” have a total combined acreage of 16.38 acres. Within the original “Lot 65” (8.46 acres), is a building envelope (2.90 acres) designated “Homelands” and the remaining lands (5.56 acres) designated as “Openlands.” Currently, a portion the “Former Golf Club Lands” (7.92 acres) is encumbered by a wetlands conservation easement. The remainder of the property has no easement. The absence of an Openlands Conservation Easement on this area of the Vardell property violates the Santa Lucia Preserve Comprehensive Development Plan requiring that residential lots maintain all structures within the Homeland boundary with the remainder of the property in an Openlands Conservation Easement.

The Vardells have applied for a Map Amendment to move/increase the “Homeland Boundary” (commonly referred to as a building envelope) by approximately 1.08 acres. The applicant is pursuing the map amendment to adjust the Homeland boundary pursuant to a private settlement agreement among the property owners (the Vardell Living Trust), the Santa Lucia Preserve Association (SLPA), and the Santa Lucia Conservancy (Conservancy), relative to a disagreement regarding the location of two existing structures located outside the existing Homeland boundary.

History of Parcel 65

In 1998, the “Phase A” Final Map for Santa Lucia Preserve was recorded depicting the locations of Homelands and Openlands for each residential lot (**Attachment H**). At that time, the area occupied by the gatehouse and associated shed (existing development) was located *inside* Lot 65, but *outside* of the designated Homelands area. It was believed that the developer’s intent was to relocate or remove these buildings prior to sale of Lot 65, which could explain why the structures were not shown on the Final Map, why no Homeland was established around them, and why no provision was made in the Conservation Easement regarding the structures.

An Openlands Conservation Easement (included within **Attachment D**) was recorded in 1998 on all portions of Lot 65 outside the Homeland area, including the portion of the lot occupied by the structures. The Conservation Easement flatly prohibits, among other things, development, residential uses and structures with the Openlands as designated on the Final Map. It has been confirmed that the Easement remains recorded on the land occupied by the structures. Also in 1998, a Declaration of Protective Restrictions (Declaration) was also recorded (**Attachment E**), which includes prohibitions on development, residential uses and structures within the Openlands. Consequently, the provisions of the Declaration apply to the Homelands and Openlands within the original area of Lot 65. The existing structures do not fall within the permitted “Approved Infrastructure and Accessory Uses” category of the Conservation Easement and/or Declaration.

In 2003, a Lot Line Adjustment (LLA) was completed on behalf of the Rancho San Carlos Partnership (RSCP). The LLA shifted a portion of the boundary of Lot 65 to west, effectively

placing the existing structures, along with 0.62 acres of land from Lot 65, into the adjacent Golf Club Parcel, Lot 264. The application did not disclose any compliance issues regarding the presence or use of the housing on lands protected by an Easement and Declaration. The Conservancy has no record of having been notified, and the adjustment did not amend the Conservation Easement or the Declaration; these restrictions remained in effect on the land occupied by the structures.

In 2008, the Vardells purchased Lot 65 and entered into an agreement with the RCSP to purchase adjacent land, including the gatehouse, an ancillary structure, and additional acreage. The purchase and sale agreement included a future lot line adjustment with the intention of creating a new Homeland and new Openland area.

In 2009, a second Lot Line Adjustment application (PLN080500) was submitted, carving approximately 8 acres from the adjacent Golf Club Lands (Lot 264), plus the original 0.62 acres of Lot 65, and combined them with the rest of Lot 65 in a Record of Survey recorded at Volume 30 Surveys, Page 70 (**Attachment I**). The original application failed to disclose the Conservation Easement or CC&R issues; however it sought to create a second Homeland around the existing structures and included a statement that the Openlands easement would be recorded on the portion of former Lot 264 outside of the new Homelands area. The County advised the applicant's representative that the second Homeland designation would require an additional permit and the payment of additional fees. Subsequently, the applicant revised the application to eliminate the request for the Homeland designation and the County accepted and processed the modified application. The Conservancy has no record of being notified of this 2009 LLA application.

To comply with County regulations, as well as the Conservation Easement and Declaration, the 2003 and 2009 lot line adjustments approvals should have been conditioned to either:

- 1) Relocate or remove the structures and record the Conservation Easement and Declaration on the 8+/- acre portion of Lot 264 merged with former Lot 65; or
- 2) Correct or amend the Final Map, Conservation Easement and Declaration to create a Homeland around the structures and eliminate the Conservation Easement within the revised Homelands area, and record the Conservation Easement and Declaration on the 8+/- acre portion of Lot 264 within Openlands.

Also in 2009, the applicant submitted a proposal to the Santa Lucia Design Review Board (DRB) for the remodel of the gatehouse. This proposal was made without reference to the fact that the Conservation Easement and Declaration still burdened the land occupied by the structures. The DRB interpreted emails and verbal statements made by the applicant representative, to mean that there was no Conservation Easement in that particular location. Based on this understanding, the Conservancy made a finding that there were no easement-related issues and deferred to the DRB regarding the standard design review process.

Subsequently, the Vardells applied for and received a Design Approval (DA090264) for the remodel (roof remodel, enlarged shed, and construction of master bath and porch additions) of the existing "gatehouse". This Design Approval did not disclose that the existing structures were located in an Openlands Conservation Easement (outside of the Homelands boundary) area of the property. Residential uses are inconsistent with the purpose of the Easement and are expressly prohibited (Sub-Section 3.1 of the Deed of Conservation Easement in **Attachment D**). Had this information been properly disclosed, the County would not have approved the issuance of the Design Approval or the Building Permits for the modification of the structures. As such,

the County issued a “Hold Applications” (prevents any additional permits from being issued on the property) and “Hold Inspections” (prevents progression of construction inspections) orders on the property, until the issues surrounding the location of the structures could be resolved. The property owners were subsequently advised they could remove the structures, move the structures (to an area within the Homeland boundary), or apply for a Map Amendment to expand the Homeland Boundary and removal of the Openlands easement from the area underlying the structures.

Remaining Issues

As of the date of this report, the gatehouse and other ancillary structure (shed) remain located on land protected by the Lot 65 Openlands Conservation Easement and Declaration recorded in 1998. As a result, the remodel and potential occupancy of the buildings, and the subsequent grading activities, represent violations of the Conservation Easement and the Declaration which govern the property.

The terms of both the Conservation Easement and the Declaration, each of which the Santa Lucia Conservancy is obligated by law to enforce, expressly prohibit the use or occupancy of this area of Lot 65 for residential purposes (within the Openlands designation). Additionally, there is no provision which “grandfathers in” existing structures or provides for their future residential use (within the Openlands designation). The structures, therefore, within the Openlands are clearly inconsistent with the Conservation Easement, the Declaration, and the Comprehensive Development Plan for the Santa Lucia Preserve. The Map Amendment to adjust the Homelands boundary and a revised Openlands Conservation Easement and Declaration will bring the residential use of the buildings back into compliance.

With the support of the Conservancy and the Santa Lucia Preserve Association, the applicant (Vardell) has chosen to pursue the Map Amendment option, and revise the Homeland area to include the existing structures, and amend the Conservation Easements and Declaration to include the remaining lands in Openlands. The Map Amendment will add 0.89 acres from Lot 65 into Homelands, and 0.19 acres from “Former Lot 264” into Homelands, for a total Homelands revision/addition of 1.08 acres. The remaining 7.73 acres of “Former Lot 264” will be placed into Openlands and a revised Conservation Easement will be recorded to this effect. It should be noted that a portion of the 7.73 acres on “Former Lot 264” is already encumbered by a Wetlands Conservation Easement (Document No. 9989941, recorded December 12, 1999). This portion of land will also be included in the revised Openlands Conservation Easement.

Settlement Agreement

In an effort to resolve the dispute amongst the Vardells, the Conservancy, and the Santa Lucia Preserve Association, relative to the location of the existing structures on Lot 65, a Settlement Agreement (**Attachment D**) was drafted to outline actions required from each party. The Settlement Agreement requires that the property owners (Vardells) make application with the County for a Map Amendment for a Homeland Boundary adjustment expanding the existing Lot 65 Homeland boundary to include the areas around/near the existing structures.

Environmental Review/Addendum

In 1996, the Board of Supervisors passed and adopted the following resolutions:

- Resolution No. 96-059 certified the EIR for the Santa Lucia Preserve Project (EIR #94-005).
- Resolution No. 96-060 approved the Santa Lucia Combined Development Permit (PC94067) that included: a Vesting Tentative Subdivision map to create 266 lots and 31

open space parcels, a Use Permit for the removal of approximately 1,480 trees (451 for homesites and 1,029 for roads and driveways), a Use Permit for Development on Slopes in Excess of 30 percent, a Use Permit for Wastewater Treatment Facility, a General Development Plan to allow a 110 room hotel, a 40 room hotel, Commercial and Public/Quasi/Public Uses, an Employee Recreation Center, and a Ranch Operation Center.

- Resolution No. 96-061 approved a Combined Development Permit for a golf trail, practice range, clubhouse, tree removal, reduced parking requirements, and ridgeline development.
- Resolution No. 97-360 made certain modifications to the Combined Development Permit and Vesting Tentative Map. None of these modification have any bearing or affect on property or the map being amended as part of the Vardell Map Amendment application.

The subject Lot 65 was reviewed as part of the Certified EIR and Vesting Tentative Subdivision Map. The analysis of the Certified EIR indicates the reason for the creation of the homeland boundaries was a compilation of analyzed resources and constraints, such as archaeology, biology and geology.

At that time, the area occupied by the gatehouse and associated shed (existing development) was located *inside* Lot 65, but *outside* of the designated Homelands area. It was believed that the developer's intent was to relocate or remove these buildings prior to sale of Lot 65, which could explain why the structures were not shown on the Final Map, why no Homeland was established around them, and why no provision was made in the Conservation Easement regarding the structures. Since the structures were existing at the time of lot creation and have remained present since that time, the expansion of the Homeland boundary area to include these developments would not impact archaeological or biological resources. For these reasons, an Addendum to Certified EIR 94005, the Environmental Impact Report for the Santa Lucia Preserve has been prepared (**Attachment G**), in accordance with Article 11, Section 15164 of the California Environmental Quality Act.

The addition of 1.08 acres to the Homeland area on Lot 65 does not increase the development potential of the parcel. The existing Homeland area on Lot 65 is already constrained. The Homeland is bisected down the center by a fault trace with a 50 foot setback on either side of the fault trace and a sewer easement. These areas encompass just over 1 acre of the 2.9 acre Homeland area. The fault trace setback area and the sewer easement reduce the developable portion of the existing Homeland area to less than 2 acres in two non-contiguous areas within the Homeland. See the map for Lot 65 in Volume 20 of Cities and Towns at Page 8 (**Attachment H**).

The original developer set a limit of 4,000 square feet for the main dwelling on Homeland for Lot 65. This limitation is enforced by the Santa Lucia Preserve Design Review Board. With the addition of the new Homeland area, the size of the main dwelling on Lot 65 will remain 4,000 square feet or less. Therefore, there is no increase in the development potential on Lot 65.

The Map Amendment will bring the existing structures into an expanded Homeland area, and require the remaining lands to be designated as Openlands. According to the Santa Lucia Conservancy, there is no ecological value to the 1.08 acres of new Homeland area. In addition, the proposed project will add nearly 8 acres of fragile habitat area that will be protected in perpetuity by an Openlands Conservation Easement. The new Openlands designation assures that there is a net benefit to the Protected Values of the Preserve, and obligations under the

Conservation Easement burdening Lot 65. By adding the new Homeland area with the existing structures, the future development on the property will be anchored on the southeastern portion of the existing Homeland area. This reduces the development potential on the northwestern portion of the Homeland area which contains greater habitat values.

Recommendation

Staff recommends, based on the analysis in this report, that the Amendment of the Santa Lucia Preserve, Phase A Map, be approved in order to relocate/expand the Homeland boundary on Lot 65. The project does not interfere with archaeological, biological, or visual resources, and would comply with the Settlement Agreement between the parties.