

**EL DORADO COUNTY DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of: May 14, 2009
Item No.: 7
Staff: Michael C. Baron

SITE PLAN REVIEW

FILE NUMBER: SPR09-0001/Carson Creek Corporate Center

APPLICANT: PAC/SIB LLC/Scott Hodson

AGENT: Warren Consulting Engineers/Thomas Fassbender

REQUEST: Finding of Consistency with General Plan Policy 7.3.3.4 for reduction of the 100 foot perennial stream setback and 50 foot wetland setback to permit grading activity within said setbacks and within the perennial stream and wetland areas as approved under a US Army Corps of Engineers Nationwide Permit #39. A Finding of Consistency would allow the reduction of riparian setbacks for site grading and improvements under Permit #190993.

LOCATION: On the north side of Golden Foothill Parkway, at the intersection with Latrobe Road in the El Dorado Hills Area, Supervisorial District II. (Exhibit A)

APN: 117-210-28, 117-210-30, 117-210-41 & 117-210-43 (Exhibit B)

ACREAGE: 63.92 acres

GENERAL PLAN: Research & Development (R&D) (Exhibit C)

ZONING: Research & Development-Design Control (R&D-DC) (Exhibit D)

ENVIRONMENTAL DOCUMENT: None. This is a finding of consistency with the General Plan only and therefore is not a project subject to CEQA.

RECOMMENDATION:

Staff recommends that the Planning Commission take the following action:

1. Find that the proposed reductions in setbacks from riparian areas are consistent with the intent of General Plan Policy 7.3.3.4 and the Interim Interpretive Guidelines for said Policy based on the above discussion, subject to the Conditions of Approval in Attachment 1, and based on the Findings in Attachment 2.

BACKGROUND

The applicant submitted an application for a grading permit to the Department of Transportation on October 13, 2008 to do site grading improvements, fulfill the requirements of Nationwide Permit #39 (Exhibit F), and import soil from adjacent parcels (Assessor's Parcel Numbers 117-210-28, 117-210-30, 117-210-41 & 117-210-43). The development area is a total of 63.92 acres within the El Dorado Hills Business Park (Exhibit A). The proposed grading permits would be approved by the Department of Transportation and would only require review by Planning Services (Permit #190993) for setback compliance only. The property contains a portion of Carson Creek as well as 9.63 acres of other riparian features that require issuance of a Nationwide Permit #39 from the Army Corps of Engineers. The Nationwide Permit would allow the applicant to fill 0.436 acres of wetland area, temporarily impact 0.012 acres of wetland area and provide special setbacks and mitigation measures to ensure the conservation and maintenance of the remaining 9.63 acres of riparian features within the project vicinity including a 24.5 acre on-site preserve for the total project area, including the two buildings to be constructed under ministerial building permits on the adjacent parcels (Permit #'s 185688 & 185691). The applicant proposes to do site improvements including grade, fill wetlands, construct bio-swales, culverts, and one conspan on the 63.92 acre site (Exhibit F).

SITE DISCRPTION

The site is adjacent to the El Dorado Hills Business Park with existing buildings and vacant residential to the south, Carson Creek and a county fire station to the west, residential land to the east, and both vacant and existing commercial land to the north. The project site is comprised of gently rolling terrain, and is at an elevation of approximately 480 to 520 feet above mean sea level. The site is covered by predominantly annual grassland. The east and west sides of the property contain riparian features with Carson Creek running along the western property line. Grading improvements are proposed to up to the area considered "No Impact Area", therefore requiring the site Plan Review.

Interim Interpretive Guidelines

The Interim Interpretive Guidelines for General Plan Policy 7.3.3.4 require a minimum setback of 100 feet from all perennial streams, rivers, and lakes, and a 50 foot setback from intermittent streams and wetlands until standards for buffers and special setbacks are established in the zoning ordinance. General Plan Policy 7.3.3.4 states: "*These interim standards may be modified if more detailed information relating to slope, soil stability, vegetation, habitat or other site- or project-specific*

conditions supplied as part of the review for a specific project demonstrates that a different setback is necessary or would be sufficient to protect the particular riparian area at issue.” Also, “For projects where the county allows an exception to wetland and riparian buffers, development in or immediately adjacent to such features shall be planned so that impacts on the resources are minimized.”

Impacts on the Perennial Streams and Riparian Areas

A biological report prepared by ECORP Consultants, Inc., was submitted to Development Services (*PacTrust El Dorado Hills Corporate Center, El Dorado County, CA*, dated August 4, 2006) accompanied by an application to the Army Corps of Engineers for a Nationwide Permit #39 (Exhibit F), which evaluated the proposed Corporate Center project to allow the applicant to impact 0.436 acres of watercourses and riparian features as well as for consistency with El Dorado County General Plan Policy 7.3.3.4 and the Interim Interpretive Guidelines for that policy. The report evaluates the sensitivity of Carson Creek, riparian areas, and any potential impacts that the proposed project would have on these resources. The report also identifies “Best Management Practices” to adhere to, which will mitigate and reduce potential impacts of the project.

The proposed drainage improvements are designed to capture, drain and filter stormwater runoff through the use of retaining walls, and drainage swales along the south and west sides of the property that would direct runoff. Drainage swales and a detention basin would filter out particulate and slow introduction of runoff into the riparian areas. These design features are proposed to be located within the required minimum setbacks as set forth in General Plan Policy 7.3.3.4 Interim Interpretive Guidelines.

The report concludes that the proposed alternative setbacks and site design incorporates sufficient setbacks to protect Carson Creek and riparian areas.

CONCLUSION

As conditioned, the project incorporates “Best Management Practices” to minimize impacts on Carson Creek and the riparian areas and the request for reduction of the riparian setbacks (100 feet for perennial streams and 50 feet for wetland areas and intermittent streams) up to the area considered “No Impact Area” and wetland fill area as approved under a US Army Corps of Engineers Nationwide Permit #39. The request would be consistent with the intent of El Dorado County General Plan Policy 7.3.3.4 and the Interim Interpretive Guidelines for that Policy.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1: Conditions of Approval

Attachment 2: Findings

Exhibit A: Vicinity Map

Exhibit B: Assessor's Parcel Map

Exhibit C: General Plan Land Use Map

Exhibit D: Zoning Map

Exhibit E: Overall Grading Plan

Exhibit F: Army Corps of Engineers Nationwide Permit #39

Exhibit G: Preserve Plan

ATTACHMENT 1
CONDITIONS OF APPROVAL

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1. The project is based upon and limited to compliance with the project description, the Staff Report exhibits marked Exhibits E, F, G, and conditions of approval set forth below. Any deviations from the project description, exhibits, or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project Description is as follows:

A finding of consistency with General Plan Policy 7.3.3.4, to allow site grading improvements, fulfill the requirements of Nationwide Permit #39, and import of soil from adjacent parcels (APN's 117-210-28, 117-210-30, 117-210-41 & 117-210-43). A finding of consistency serves to protect the integrity of the preserve and avoid unanticipated future impacts by not allowing roads, utility lines, trails, benches, equipment or fuel storage, grading, firebreaks, mowing, grazing, planting, discing, pesticide or herbicide use, burning, artificial water aeration systems/fountains, or other structures or activities shall be constructed or occur within the on-site mitigation preserve and avoidance areas without specific, advance written approval from the Army Corps of Engineers.

The Army Corps of Engineers permit does not authorize the applicant to take an endangered species, in particular the vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), or designated critical habitat. The authorization under the Army Corps of Engineers permit is conditional upon the applicant compliance with all of the mandatory terms and conditions associated with "incidental take" of the Biological Opinion (Fish and Wildlife Service Biological Opinion (Number 81420-2008-F-156, dated October 29, 2007)), which terms and conditions are incorporated by reference of the Army Corps of Engineers permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and would also constitute non-compliance with the Army Corps of Engineers permit.

2. In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action, as provided in Section 66474.9(b) of the California Government Code.

The applicant shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding against El Dorado County or

its agents, officers, or employees to attack, set aside, void, or annul an approval of El Dorado County concerning the site plan review, which action is brought within the time period provided for in Section 66499.37. County shall notify the applicant of any claim, action, or proceeding and County will cooperate fully in the defense.

3. The applicant shall submit written evidence from the Army Corps of Engineers that the Nationwide Permit #39 has been issued, prior to grading permit issuance.

**ATTACHMENT 2
FINDINGS**

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1. *There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings or uses in the vicinity and the same zone, and have not resulted from any act of the owner or applicant.*

The project site is bordered on the west side by Carson Creek (7.466 acres) and 3.659 acres of riparian area to the south.

2. *The strict application of the provisions of the ordinance requested to be varied would deprive the applicant of the reasonable use of the land or building, allowed for other land in the vicinity and the same zone.*

Research and development campus type uses are found immediately to the south of the proposed impact area. The proposed grading and improvements would ensure that future locations of the structures would be located within areas that would minimize impacts to riparian areas as much as possible. The applicant has followed the process set forth by General Plan Policy 7.3.3.4 and the Interim Interpretive Guidelines for that Policy. Strict application of the provisions would deprive the applicant of the reasonable use of the land for commercial development.

3. *The variance is the minimum necessary for the reasonable use of the land or building.*

To accommodate the proposed project, the riparian setback would be reduced to the minimum necessary to complete the required grading improvements to sufficiently protect Carson Creek as well as other riparian areas.

4. *The variance is in conformity with the intent of this article and not detrimental to the public health, safety and welfare, or injurious to the neighborhood.*

The reduction in setbacks from Carson Creek and riparian features as well as the approved fill of some riparian areas has been planned for sufficient protection of those remaining features and would not be detrimental to the public health, safety and welfare, or be injurious to the neighborhood.

5. *The alternative setback is consistent with the General Plan.*

The proposed project has been designed in a manner to ensure that alternative setbacks would not have an adverse effect on Carson Creek and riparian areas. The project, therefore, is consistent with intent of General Plan Policy 7.3.3.4 by providing for an adequate setback for protection of natural and man-made wetlands, vernal pools, wet meadows, and riparian areas from impacts related to development for their importance to wildlife habitat, water purification, scenic values, and unique and sensitive plant life.