



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: March 17, 2015
Placement: Departmental
Estimated Tme: 1 hour
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, Ph.D, Director, Planning and Development
(805) 568-2085
Contact Info: Alice McCurdy, Deputy Director, Development Review Division,
(805) 568-2518
SUBJECT: **Hearing to Consider Resolution of the Appeal (Case No. 13APL-00000-00029) of the County Planning Commission's Approval of the Beach Club Project (Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054), consistent with the Conditional Settlement Agreement, First Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

N/A

Recommended Actions:

Consider Case No. 13APL-00000-00029, the Summerland Citizens' Association, Reeve Woolpert, and Tom Evans' Appeal of the County Planning Commission's approval of Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054 for the Beach Club project.

On March 17, 2015, staff recommends that your Board take the following actions:

1. Hold a public hearing on the Appeal, Case No. 13APL-00000-00029, of the County Planning Commission's approval of Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054;
2. Make the required findings for approval of the revised project, Case No 11CDH-00000-00006, including CEQA findings (Attachment 2);
3. Adopt the Proposed Revised Final Mitigated Negative Declaration 13NGD-00000-00012 (Attachment 4) and adopt the mitigation monitoring program included in the Revised Conditions of Approval (Attachment 3); and

4. Grant de novo approval of Case No. 11CDH-00000-00006, thereby affirming in part and modifying in part the decision of the Planning Commission subject to the Revised Conditions of Approval, thereby resolving the Appeal, Case No. 13APL-00000-00029.

Alternatively, refer back to staff if the Board takes other than the recommended actions.

The project site is located at 2825 Padaro Lane in the Summerland area, First Supervisorial District. The applications involve AP No. 005-260-018.

Summary:

Ana Citrin (Law Office of Mark Chytilo) timely filed an appeal on December 16, 2013 of the Beach Club project approved by the County Planning Commission on December 4, 2013 (Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054). The appeal was filed on behalf of the Summerland Citizens' Association, Reeve Woolpert and Tom Evans.

The appealed Beach Club project consisted of three cases: (1) 12TPM-00000-00006 to divide 10.25 acres into two lots of 3.02 and 7.23 acres on property zoned 3-E-1; (2) 11CDH-00000-00006 for legalization of grading conducted without a permit; legalization of as-built modifications to a previously approved habitat restoration plan; removal of existing legal nonconforming dwellings; removal of a play structure, retaining wall and well located within the riparian setback; capping of significant cultural resources; installation of a new fence; and (3) 11CDH-00000-00054 for construction of a new single family residence and associated fencing and landscaping.

On July 8, 2014, the appeal of the Planning Commission's approval of the proposed project, including the associated Proposed Final Mitigated Negative Declaration, was reviewed by your Board. At the hearing of July 8, 2014, your Board directed staff to prepare a Focused Environmental Impact Report on the proposed project's recreational impacts and related policy inconsistencies, and to return to the Board when completed.

On August 1, 2014, the Applicant filed a lawsuit against the County challenging the Board's determination that the proposed project requires a focused EIR. The Petition also alleges that the County did not act on the Map application within the timeframe established by the Subdivision Map Act. On March 3, 2015, your Board approved a conditional settlement agreement to resolve the lawsuit, included as Attachment 5 to this Board Letter. The settlement agreement is contingent on the Board holding a public hearing to consider and take action on a Revised Project. In connection with the conditional settlement agreement, the Applicant has submitted a Revised Project Description that does not include an application for a Tentative Parcel Map, Case No. 12TPM-00000-00006. The Revised Project Application is for a smaller, less impactful project that does not include the creation of a new lot, which eliminates any potential environmental impacts attributable to the lot split. The Revised Project Description also eliminates the proposed new single family dwelling, Case No. 11CDH-00000-00054. Because no new dwelling is proposed, the Revised Project Description does not include removal of the existing, nonconforming single family dwelling and detached residential second unit.

Accordingly, the Proposed Final Mitigated Negative Declaration has been revised to reflect the elimination of the proposed lot split, withdrawal of the proposed single family dwelling, and retention of

the existing residence and second unit until such time as a new residence is constructed on the subject parcel. The Findings and Conditions of Approval have been revised to reflect these changes. The remaining project, 11CDH-00000-00006, would allow as-built grading, modifications to a previously approved biological resources restoration plan, removal of various nonconforming structures, installation of a split rail fence, and capping for cultural resource protection. The project description for 11CDH-00000-00006 also has been changed to add a development exclusion area to protect sensitive resources; clarify what activities are allowable within the development exclusion area and in the riparian setback; and to establish a building envelope. This language, which was requested by the applicant, was previously incorporated into the project description for the Tentative Parcel Map. This language is acceptable to the County and is consistent with the mitigation measures in the proposed Revised Final Mitigated Declaration. All other elements of the proposed project remain the same.

Background:

On December 4, 2013, after hearing substantial testimony, the Planning Commission voted 4-0 (Blough absent) to approve the original project and to adopt the Revised Final MND as adequate environmental review under CEQA. On December 16, 2013, the Planning Commission's approval of the project was appealed by Ana Citrin, Law Office of Mark Chytilo, on behalf of the Summerland Citizens' Association, Reeve Woolpert, and Tom Evans. Appeal issues included the project's consistency with ordinance and policies addressing recreation, trails, and visual resources; adequacy of the MND; and the County's practice of legalizing zoning violations. The project was agendaized for the Board of Supervisors hearing of April 1, 2014. However, Planning & Development requested that it be dropped from the agenda in order to evaluate and address additional information received from the appellants on March 28, 2014. The item was continued to a later Board Hearing.

Additional appeal issues presented in the March 28, 2014 letter included the permit status of a gate across Toro Canyon Creek at Padaro Lane, historic public use of the creek corridor for beach access, and interference with claimed public prescriptive rights. Public comments in support of the appeal were received on March 28, 2014 from the Montecito Trails Foundation and the Santa Barbara County Trails Council. Comments against the appeal were received after April 1, 2014 from the Carpinteria Summerland Fire Department, and Native Americans Patrick Tumamait and Gilbert Unzueta.

The letters from the Montecito Trails Foundation and the Santa Barbara County Trails Council urge the County to exact a trail easement along Toro Canyon Creek. However, the Carpinteria Summerland Fire Department expressed concern with any increase in pedestrian traffic in the creek area, which, because of environmental concerns, cannot be kept free of dense vegetation. Native American representatives oppose a public trail because of the presence of extremely sensitive cultural resources in this location.

As a result of the additional issues raised in the materials submitted on March 28, 2014, staff prepared revisions to the Proposed Final MND presented to the Planning Commission on December 4, 2013 ("Revised Proposed Final MND") including a revised project description providing that the gate would be removed prior to issuance of Coastal Development Permit 11CDH-00000-00006. This change was offered by the applicant and was not required to mitigate any environmental impact, nor would it result in an environmental impact. Removal of the gate was also incorporated as a recommended condition of approval for 11CDH-00000-00006, in order to formalize and clarify elements of its implementation. The

item was re-agendized and re-noticed for the Board of Supervisor's hearing of July 8, 2014. The Board Agenda Letter dated July 8, 2014 contains a detailed discussion and analysis of the appeal issues.

At the Board of Supervisor's hearing of July 8, 2014, the Board directed staff to prepare, as expeditiously as practical, a Focused Environmental Impact Report on recreational impacts and related policy inconsistencies and to return to the Board as appropriate when completed. As a result, Case No. 13APL-00000-00029 was neither approved nor denied; case processing was deferred until further compliance with CEQA was addressed.

Discussion:

As discussed above, as part of the settlement agreement the applicant would withdraw the applications for the lot split (12TPM-00000-00006) and the new residence (11CDH-00000-00054). Absent those two permits, the remaining project (11CDH-00000-00006) would permit the following: (1) as-built grading; (2) modifications to the biological resources restoration plan titled "Habitat Restoration and Revegetation Plan for 2825 Padaro Lane (APN 005-260-009), Summerland, Santa Barbara County, California" dated April 9, 2009 (Plan) that was previously approved under Case no. 08CDH-00000-00014; (3) removal of an existing retaining wall; (4) removal of an existing play structure; (5) abandonment of an existing well; (6) grading for sensitive resource capping; (7) installation of a split-rail safety fence; (8) removal of the gate portion of a legal nonconforming gate, while leaving the support pillars in place; (9) establishment of a building envelope; and (10) establishment of a development exclusion area which would be capped with fill to protect sensitive resources. The Mitigated Negative Declaration, Conditions of Approval, and Findings prepared for the original project have been revised to address only the remaining request, 11CDH-00000-00006.

Fiscal and Facilities Impacts:

Budgeted: Yes

No appeal fees are required for appeals of projects that may be appealed to the California Coastal Commission. The estimated staff cost to process the appeal is approximately \$14,932 (80 planner hours). This work is funded in the Planning and Development Permitting Budget Program on page D-212 of the adopted 2013-2015 fiscal year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on March 17, 2015. The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

Attachments:

1. Appeal Packet 13APL-00000-00029, dated December 16, 2013
2. Revised Board of Supervisors Findings of Approval
3. Revised Conditions of Approval

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4. Revised Proposed Final MND
5. Conditional Settlement Agreement
6. Planning Commission Staff Report dated November 15, 2013

Authored by: Joyce Gerber, Planning and Development Department, (805) 568-3518