

SANTA BARBARA COUNTY BOARD AGENDA LETTER



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

Agenda Number:

Prepared on: February 20, 2003
Department Name: Planning & Development
Department No.: 053
Agenda Date: March 4, 2003
Placement: Departmental
Estimate Time: 30 Minutes
Continued Item: NO
If Yes, date from:
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TO: Board of Supervisors
FROM: Rita Bright, Deputy Director
Development Review Division

STAFF

CONTACT: Alan Hanson, Project Planner, 568-2854
Patricia Miller, Supervising Planner, 568-2054

SUBJECT: **Ballantine Appeal of the Knight Land Use Permit (01LUP-00000-01180):** Hearing on the appeal of James Ballantine (filed on July 29, 2002) of the Planning Commission's July 17, 2002 decision to deny Mr. Ballantine's appeal of Planning & Development's decision to approve 01LUP-00000-01180 to allow for the demolition of an existing single family residence and attached garage and construction of a replacement single family residence and garage in the 7-R-1 Zone District under Article III, Chapter 35 of the County Code. The application involves AP No. 023-114-005, located at 2682 Montrose Place, Mission Canyon area, First Supervisorial District.

Recommendation(s):

Staff recommends that the Board take the following action:

1. Uphold the Planning Commission's July 17, 2002 decision to deny 02APL-00000-00012 and approve 01LUP-00000-01180 per the attached findings and conditions set forth in this Board letter (Attachments A & B) and;
2. Deny the appeal.
3. Refer back to staff if the Board takes other than the recommended action for appropriate findings and conditions.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with actions required by law or by routine business necessity.

Estimated length of hearing: 30 Minutes

Executive Summary & Discussion:

Executive Summary:

On April 12, 2002 P&D approved a land use permit (01LUP-00000-01180), for the demolition of the existing 2,185 ft² residence and 500 ft² attached two-car garage at 2682 Montrose place and construction of a replacement residence of 2,500 ft² with an attached two-car garage of 550 ft² on a 10,762 ft² parcel zoned 7-R-1-D in the Mission Canyon Specific Plan (MCSP) area. On April 22, 2002 Mr. Ballantine appealed P&D's decision and that appeal was forwarded to the Planning Commission for their consideration at their July 17, 2002 hearing. The unifying theme of Mr. Ballantine's appeal to Planning Commission, as well as the testimony presented at the Planning Commission hearing, is that construction of the proposed residence on the Knight property would adversely affect the private views to the south (toward the ocean) from the residence owned by the appellant's client. At the July 17, 2002 hearing, the Planning Commission voted 5-0, after consideration of the information presented by staff, the appellant, the property owners Eric & Kelly Knight, and the public, to deny the appeal and approve the land use permit (LUP) in question (please refer to Planning Commission Action Letter, Attachment C of this Board letter).¹

On July 29, 2002 Mr. Ballantine appealed the Planning Commission's decision to the Board of Supervisors (please refer to Attachment E, Mr. Ballantine's appeal of the Planning Commission's decision dated July 29, 2002). Subsequent to that appeal County Counsel hosted a facilitation meeting for all parties involved with the appeal on September 9, 2002. This facilitation effort was successful (a facilitation report prepared by County Counsel accompanies this board letter as Attachment G) and has led to an agreement between Mr. Ballantine's clients and the Knights that if certain tree trimming and maintenance are performed on a regular, long-term basis, the appellants would be willing to withdraw their appeal. Since the inclusion of these tree trimming/maintenance requirements in the conditions of approval for the subject land use permit would require an amendment to the permit approved by the Planning Commission, such changes must be reviewed and approved by the Board. Specifically, those changes include the following:

- 1) The conditions of approval approved by the Planning Commission on July 17, 2002 would be amended to require the Knights to annually trim the Monterey cypress on the NE corner of the Knight property to remove the tree's lower foliage under direction of a qualified arborist.
- 2) These same conditions of approval would also be amended to require the Knights to annually crown the flowering eucalyptus located on the NE corner of the Knight's property to remove interior growth and reduce the density of branches to allow a filtered view through the tree, again under the direction of a qualified arborist.
- 3) The landscape plan approved by the Planning Commission would be amended to replace a previously proposed jacaranda tree at the NE corner of the Knight property with a much lower growing Yarra River tea tree (*Leptospermum polygalifolium*).

¹ It should be noted that the Planning Commission actually denied the appeal in part and upheld the appeal in part due to the fact that P&D staff did discover inconsistencies between the approved site plan and the front yard setback and landscape plan requirements of Article III, Chapter 35 of the County Code (Inland Zoning Ordinance or IZO). These inconsistencies with the ordinance have been addressed by the modified conditions of approval of 01LUP-00000-01180 as approved by the Planning Commission.

It should be noted that these requirements result solely from the efforts of the private parties involved to resolve this dispute and are not necessary to address any policy or CEQA issues posed by the proposed project. As such, monitoring and enforcement of these requirements would be provided under a signed Memorandum of Understanding between the parties to the appeal without any County involvement since the County lacks the authority to do so (please refer to Attachment F of this staff report).

The Mission Canyon Specific Plan (MCSP) requires all new development to avoid to the maximum extent feasible the removal of native and specimen ornamental trees. Both the Monterrey cypress and flowering eucalyptus to be trimmed are considered specimen ornamental trees. Staff and P&D's certified forester have reviewed the arborist's report outlining these tree trimming and maintenance requirements in light of the MCSP's protective policies for specimen trees and determined that if ANSI A300 guidelines are followed, the proposed trimming and tree maintenance would not result in the removal of these trees in violation of the applicable policies of the MCSP.

Facilitation:

As noted in the executive summary, a facilitation meeting between the applicant, the appellant, County Counsel, and P&D staff was held on September 9, 2002. County Counsel has prepared a facilitation report accompanying this board letter as Attachment G.

Mandates and Service Levels:

Pursuant to §35-327.3 of Article III, Chapter 35 of the County Code (Inland Zoning Ordinance or IZO), a decision of the Planning Commission may be appealed to the Board of Supervisors by the applicant or an aggrieved person. This section of the IZO also requires that the appellant state specifically in the appeal wherein the decision by the Planning Commission is not in accord with the provisions and purposes of this Article or wherein it is claimed that there was an error or an abuse of discretion by the Planning Commission.

Fiscal and Facilities Impacts:

The costs of processing appeals of land use permits are typically covered through fixed fees and funds in Planning & Development's adopted budget. Fees collected for appeals vary based on the location of the project and who files the appeal. This appeal was filed by an interested third party and a fee of \$435 was collected. The cost of processing the appeal above the \$435 filing fee will be borne by Planning & Development. The estimated cost of processing this appeal is approximately \$4,000 and is budgeted in the Permitting and Compliance Program on page D-266 of Planning & Development's 2002-2003 fiscal year budget.

Special Instructions:

The Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, attn: Cintia Mendoza, Hearing Support. Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors' final action.

Concurrence: County Counsel

Attachments:

- A. Findings
- B. Conditions of Approval for 01LUP-00000-01180
- C. Planning Commission Action Letter of July 26, 2003
- D. Planning Commission Staff Report dated July 5, 2002
- E. Appeal to the Board of Supervisors of the Planning Commission's July 17, 2003 action by James Ballantine dated July 29, 2002
- F. MOU Between the Satos & the Knights
- G. Facilitation Report dated February 13, 2003
- H. Revised Landscape Plan

ATTACHMENT A: FINDINGS

- 1. The proposed development conforms to the applicable policies of 1) the Comprehensive Plan, and 2) with the applicable provisions of this Article and/or falls within the limited exception allowed under §35-306.7.***

As noted under §6.2 of the staff report to the Planning Commission dated July 5, 2002, the proposed single family dwelling is consistent with applicable policies of both the Mission Canyon Specific Plan and the County's Comprehensive Plan. Specifically, the design of the project complies with all applicable development standards of the Mission Canyon Specific Plan regarding protection of natural landforms, minimization of site disturbance, and parking. With implementation of the approved, revised landscape plan, and compliance with the conditions of permit approval involving trimming and maintenance of specimen ornamental trees on the subject property, the project may be considered consistent with the tree preservation policies of the Mission Canyon Specific Plan. The project is also consistent with Land Use & Development Policies 4 & 5 of the County's Comprehensive Plan since adequate infrastructure and services are available to serve the new residence and the residence would be connected to public water and sewer. Other applicable policies of the County's Comprehensive Plan that the project complies with are; 1) Hillside & Ridgeline Protection Policies 1,2, & 6 regarding minimization of cut/fill, designing the project to fit the existing terrain, and provision of stormwater conveyance improvements to minimize erosion, and 2) Visual Resources Protection Policies 3 & 5 regarding the compatibility of the scale and character of new development with the surrounding and the undergrounding of utility lines serving the proposed residence. The proposed single family dwelling complies with the maximum building height limitations, parking requirements, and type of use allowed in the 7-R-1 zone district per Article III, Chapter 35 of the County Code. With compliance with the conditions of approval set forth in Attachment B to this staff report, the proposed residence would comply with all applicable setback and landscaping requirements of Article III, Chapter 35 of the County Code.

- 2. The proposed development is located on a legally created lot.***

The parcel on which the proposed single family dwelling would be located was created per the subdivision map of the Mission Canyon Heights, Filing II subdivision recorded in Book 20, pages 35-42 in the office of the County Clerk & Recorder and as such is a legally created parcel.

- 3. The subject property is in compliance with all laws, rules, and regulations pertaining to zoning uses, subdivisions, setbacks, and other applicable provisions of this Article, and such zoning violation processing fees as established from time to time by the Board of Supervisors have been paid. This subsection shall not be interpreted to impose new requirements on legal non-conforming lots and structures under §35-305 et.seq.***

The subject property was legally created and meets the minimum lot size, frontage, and depth to width ration requirements of the County's zoning ordinance and subdivision regulations. All existing and proposed uses are considered permitted uses within the applicable 7-R-1 zone district. A zoning violation case for an illegal secondary unit was opened based on a complaint filed with P&D on December 20, 2001 and the violation was abated on February 14, 2002 (Zoning Enforcement Case 01ZEV-00000-00402). Payment of all processing fees,

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including fees resulting from said zoning enforcement action is required per Attachment B of this staff report.

ATTACHMENT B: CONDITIONS OF APPROVAL

1. This land use permit is based upon and limited to compliance with the project description, the hearing exhibits marked Board of Supervisors, Exhibit A, dated March 4, 2003, 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:

The proposed project involves the demolition of the existing 2,185 ft² single family dwelling and attached 500 ft² garage and construction of a new 2,500 ft² single family dwelling, 550 ft² attached garage, and a detached carport covered by an arbor/trellis that would provide one additional parking space. Additional development includes an upper floor deck, new rock retaining walls of approximately four feet in height, and patios/flat work in terraced landscaped areas at the entry to the residence and at the rear of the property. Approximately 270 cubic yards of cut & fill (120 cubic yards cut and 150 cubic yards of fill) is proposed. One mature pine tree at the entrance to the proposed residence would be removed as well as one jacaranda tree at the NE corner of the existing structure. Five new trees of the following sizes and species would be planted at the front of the residence along Montrose Street (north elevation) to help screen the residence:

- ✓ One (1) 24" boxed Yarra River tea tree ranging in height from 10'-15' with a spread of 15'
- ✓ One (1) 24" boxed Western Rosebud ranging in height from 12'-15' with a spread of 15'
- ✓ One (1) 36" boxed fruitless Olive ranging in height from 20'-25' with a spread of 25'
- ✓ One (1) 36" boxed Marina Evergreen ranging in height from 20'-25' with a spread of 20'
- ✓ One (1) 24" boxed Coast Live Oak ranging in height from 20'-25' with a spread of 25'

No native vegetation would be removed and the removal of non-native trees is limited to one (1) deodar cedar and one jacaranda at the front of the existing residence. The new residence will have an average height of approximately 19 feet.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans (such as Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County.

2. All site development and/or noise generating construction & construction equipment maintenance shall be limited to the hours between 7:00 a.m. and 4:30 p.m., Monday–Friday only & shall not occur on State holidays (e.g. Thanksgiving, Labor Day). Non-noise generating construction activities, such as interior painting, are not subject to these restrictions. **Plan Requirements & Timing:** One sign stating these restrictions shall be

posted by the applicant onsite prior to commencement of any grading and/or construction activities. Violations may result in suspension of permits.

Monitoring: Building inspectors and Permit Compliance staff shall spot check and respond to complaints.

3. Approximately 270 yd³ of grading (120 cut and 150 fill) with 125 yd³ of export is proposed for this project. Any change in grading shall be reviewed and approved by both zoning and grading and subject to applicable fees. The applicant shall limit all excavation and grading to the dry season of the year (i.e. April 15 to Nov. 1) unless a Public Works approved erosion control plan is in place and all measures therein are in effect. **Plan Requirements & Timing:** This requirement shall be noted on all grading and building plans. Graded surfaces shall be reseeded within 4 weeks of grading completion, with the exception of surfaces graded for the placement of structures. These surfaces shall be reseeded if construction of structures does not commence within 4 weeks of grading completion.

Monitoring: Permit Compliance shall site inspect during grading to monitor dust generation and four (4) weeks after grading to verify reseeded and to verify the construction has commenced in areas graded for placement of structures.

4. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site. **Plan Requirements:** The following the dust control measures listed below shall be included on all grading and building plans.
 - a) During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, water trucks or sprinkler systems are to be used to prevent dust from leaving the site and to create a crust after each day's activities cease.
 - b) During construction, water trucks or sprinkler systems shall be used to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this would include wetting down such areas in the later morning and after work is completed for the day and whenever wind exceeds 15 miles per hour.
 - c) Soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation.

Timing: These requirements shall be adhered to throughout all grading and construction periods.

Monitoring: P&D shall ensure measures are on plans. Permit Compliance, grading and building inspectors shall spot check in the field. APCD inspectors shall respond to nuisance complaints.

5. Any exterior night lighting installed on the project site shall be of low intensity, low glare design, and shall be hooded to direct light downward onto the subject parcel and prevent spill-over onto adjacent parcels. Applicant shall develop a Lighting Plan incorporating these requirements and provisions for dimming lights after 10:00 p.m. **Plan Requirements & Timing:** The locations of all exterior lighting fixtures and an arrow showing the direction of light being cast by each fixture and the height of the fixtures shall be depicted on a Lighting Plan to be reviewed and approved by P&D prior to issuance of any land use permit for the project.

Monitoring: P&D shall review the Lighting Plan for compliance with this measure prior to issuance of a land use permit for the project. Permit Compliance shall inspect structures upon completion to ensure that exterior lighting fixtures have been installed consistent with their depiction on the final Lighting Plan.

6. All trees located near the proposed structures shall be protected from stucco, paint and other potentially harmful materials during construction activities. No construction equipment shall be parked or stored near any native or specimen tree not approved for removal. **Plan Requirements & Timing:** These requirements shall be printed on any grading and/or building plans for the project. Compliance with said requirements shall be required during the life of the project.

Monitoring: P&D shall ensure all building and grading plans include this condition. Permit Compliance shall spot check in the field.

7. Any trenching required within the critical root zone of any native or specimen not approved for removal shall be done by hand. Any unanticipated damage that occurs to trees or sensitive habitats resulting from construction activities shall be mitigated in a manner approved by P&D. This mitigation may include but is not limited to posting of a performance security, tree replacement on a 10:1 ratio and hiring of an outside consultant biologist to assess the damage and recommend mitigation. The required mitigation shall be done immediately under the direction of P&D prior to any further work occurring on site. Any performance securities required for installation and P&D will release maintenance of replacement trees after its inspection and approval of such installation.

Plan Requirements & Timing: This requirement shall be included on all building and grading plans prior to the issuance of any land use permit for the project.

Monitoring: P&D shall ensure inclusion of this condition on all submitted building and grading plans. Permit Compliance shall monitor for compliance in the field.

8. The proposed project shall be constructed in strict conformance with the plans approved under County BAR case #01BAR-00000-00233 as amended by these conditions.
9. All changes to the project shall be reviewed and approved by P&D for determination of consistency with applicable County policy.
10. Prior to issuance of the subject land use permit, the applicant shall amend the site plan to comply with all applicable setback requirements of Article III, Chapter 35 of the County Code. **Plan Requirements & Timing:** Said plans shall be modified and submitted to P&D for review and approval prior to the issuance of any land use permit for the project.

Monitoring: P&D staff shall ensure that the site plan for the project has been modified to meet all applicable setback requirements of Article III, Chapter 35 of the County Code prior to land use permit issuance.

11. The project landscaping shall be installed with irrigation per the approved landscaping plan. **Plan Requirements & Timing:** Prior to issuance of a land use permit for the proposed single family dwelling, the applicant/owner shall enter into an agreement with the County to install required landscaping and water-conserving irrigation systems and maintain the required landscaping for the life of the project. The applicant shall also submit four copies of

a final landscape and water-conserving irrigation plan to P&D for review and approval. Prior to occupancy clearance, landscape and irrigation shall be installed in its entirety per the approved landscape plan.

Monitoring: Prior to occupancy clearance, Permit Compliance staff shall photo document installation. Permit Compliance staff shall check maintenance as needed. Release of any performance security requires Permit Compliance signature. Landscaping shall be maintained for the life of the project.

12. Two performance securities shall be provided by the applicant prior to issuance of a land use permit for the project, one equal to the value of installation of all items listed in section (a) below (labor and materials) and one equal to the value of maintenance and/or replacement of the items listed in section (a) for three (3) years of maintenance of the items. The amounts shall be agreed to by P&D. Changes to approved landscape plans may require a substantial conformity determination or an approved change to the plan. The installation security shall be released upon satisfactory installation of all items in section (a). If plants and irrigation (and/or any items listed in section (a) below) have been established and maintained, P&D may release the maintenance security three (3) years after installation. If such maintenance has not occurred, the plants or improvements shall be replaced and the security held for another year. If the applicant fails to either install or maintain according to the approved plan, P&D may collect security and complete work on property. The installation security shall guarantee compliance with the provision below:

- a) Installation of all landscaping and landscape irrigation per the approved landscape plan accompanying Board of Supervisors Exhibit A, dated March 4, 2003 and the irrigation plan approved by P&D staff prior to the issuance of any land use permit for the project.

Monitoring: Permit Compliance staff shall inspect landscaping and landscape improvements for compliance with approved plans prior to authorizing release of both installation and maintenance securities.

12. The applicant shall annually trim and maintain the Monterrey cypress located at the northeast corner of the subject property to remove lower foliage under the upper canopy in conformance with ANSI A300 guidelines and under the supervision of a qualified arborist.
13. The applicant shall annually crown clean and maintain the flowering eucalyptus located at the northeast corner of the subject property to remove interior growth and reduce the density of branches to allow for a filtered view through the tree. Said work shall be preformed in a manner consistent with ANSI A300 guidelines and under the supervision of a qualified arborist.
14. Prior to the issuance of any land use permit for the project the property owner shall pay all unpaid zoning enforcement fees resulting from all past County zoning enforcement action unless said fees are waived by the Director of P&D.
15. All applicable final conditions of approval shall be printed in their entirety on applicable pages of grading/construction or building plans submitted to the Building & Safety Division of P&D for approval of any grading or building permits. These shall be graphically illustrated where feasible.

16. The applicant shall ensure that the project complies with all approved plans and all project conditions including those, which must be monitored after, the project is built and occupied. To accomplish this the applicant agrees to:
 - a) Contact P&D compliance staff as soon as possible after project approval to provide the name and phone number of the future contact person for the project and give estimated dates for future project activities.
 - b) Contact P&D compliance staff at least two weeks prior to commencement of construction activities to schedule an on-site pre-construction meeting with the owner, compliance staff, other agency personnel, and with key construction personnel.
 - c) Pay fees prior to approval of any land use permit for the project as authorized under ordinance and fee schedules to cover full costs of monitoring as described above, including costs for P&D to hire and manage outside consultants when deemed necessary by P&D staff (e.g. non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance. In such cases, the applicant shall comply with P&D recommendations to bring the project into compliance. The decision of the Director of P&D shall be final in the event of a dispute.
16. The property owner shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of the land use permit. In the event that the County fails promptly to notify the applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.
17. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the County and substitute conditions may be imposed.

ATTACHMENT C
PLANNING COMMISSION ACTION LETTER, JULY 26, 2002

ATTACHMENT D
PLANNING COMMISSION STAFF REPORT, JULY 5, 2002

ATTACHMENT E
BALLANTINE APPEAL TO THE BOARD OF SUPERVISORS, JULY 29, 2002

ATTACHMENT F
MEMORANDUM OF UNDERSTANDING
BETWEEN THE SATOS & THE KNIGHTS

ATTACHMENT G
FACILITATION REPORT

ATTACHMENT H
REVISED LANDSCAPE PLAN