

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:
Prepared on: August 29, 2006
Department Name: Planning and Development
Department No.: 053
Agenda Date: September 12, 2006
Placement: Administrative
Estimate Time: 60 minutes on September 26, 2006
Continued Item: No
If Yes, date from:
Document File Name:

TO: Board of Supervisors

FROM: John Baker, Director
Planning and Development Department

STAFF Mark Walter, Planner (568-2852)
CONTACT: Development Review – South

SUBJECT: Applicant Appeal of Planning Commission Approval of Arroyo Hondo Steelhead Passage Project

Set Hearing for September 26, 2006 (Estimated Time: 60 minutes)

Recommendation:

That the Board of Supervisors set hearing for September 26, 2006 to deny the appeal by the applicant, the Land Trust for Santa Barbara County, and uphold the Planning Commission's August 9, 2006 approval with conditions of the Arroyo Hondo Steelhead Passage Project, 06DVP-00000-00010. The project involves AP Nos. 081-150-002, -010; 081-010-005 and Cal Trans property (no APN), Gaviota Area, Third Supervisorial District.

The Board of Supervisors action should include the following:

1. Adopt the required findings for the project, as specified in the Planning Commission action letter dated August 14, 2006 and as revised in the August 24, 2006 action letter, including CEQA findings;
2. Consider the Mitigated Negative Declaration prepared by the California Department of Fish and Game for purposes of approving the project and adopt the mitigation monitoring program contained in the conditions of approval.
3. Deny the appeal, upholding the Planning Commission's approval with conditions of Development Plan 06DVP-00000-00010;
4. Grant *de novo* approval of the project subject to the conditions included in the Planning Commission's action letter.

Alignment with Board Strategic Plan:

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

Executive Summary and Discussion:

Background

On August 9, 2006, the Planning Commission approved by a 5-0 vote the Arroyo Hondo Steelhead Passage Project. The project as approved consists of modifications to the bed and banks of Arroyo Hondo Creek, as well as the removal of a large concrete culvert, placement of grouted rock and the construction of a new “lagoon” at the creek terminus. The Planning Commission also voted to consider the Mitigated Negative Declaration prepared by the California Department of Fish and Game for purposes of approving the project and adopt the mitigation monitoring program contained in the conditions of approval.

The Planning Commission’s approval of the project was based on the findings and conditions set forth in the Planning Commission Action Letter dated August 14, 2006 and as revised in the August 24, 2006 action letter (included as Attachment A).

The Planning Commission’s approval with conditions of 06DVP-00000-00010 was appealed on August 21, 2006 by Mr. Michael Feeney, Executive Director, for the applicant, the Land Trust for Santa Barbara County.

Staff Discussion

The appellant expressed concerns with three (3) of the conditions of approval (Condition Nos. 69, 72 and 78). In summary, the appellant considers these conditions inappropriate for projects whose sole purpose is habitat restoration. These concerns and the specific remedies requested by the appellant are discussed in the sections below.

1. Condition No. 69: Requirement for a 3:1 Mitigation Ratio

Condition of approval No. 69 reads as follows:

*Prior to issuance of the follow-on Coastal Development Permit, review and approval by P&D of a Restoration Plan is required. The Restoration Plan would incorporate the mitigation acreage noted in the project description (4.92 acres).¹ Native vegetation from locally occurring stock would be planted in the restoration areas and maintained and monitored for five years. At a minimum, the restoration plan would require that the following performance criteria be met at the end of the five year period: 80% cover of native plants, less than 5% weed cover, and native plantings that had survived without supplemental watering for two years. **Plan Requirements:** A final restoration plan shall be submitted to and approved by P&D prior to issuance of the follow-on Coastal Development Permit. **Timing:** The approved restoration plan shall be implemented immediately after completion of construction activities. **Monitoring:** A biologist from the County-approved list shall conduct surveys and prepare a performance report every six (6) months to assess compliance of the restoration with the approved plans and performance criteria. The report shall be provided to the Planning and Development Department permit compliance staff.*

Appellant Issues

¹ 4.92 acres = 3:1 mitigation for 1.64 acres of impacts

- a) The appellant states that the requirement of a 3:1 mitigation ratio is “extraordinary”.
- b) The appellant states that a 3:1 mitigation ratio should not be applied to projects “designed solely to create environmental benefit”, and that temporary disturbances resulting from a restoration project should not be “penalized in the same way” as construction projects that result in “permanent loss or degradation of habitat”.
- c) The appellant states that “there is not physical space to install 3+ acres of mitigation on the site” and that the available funding is insufficient to cover the costs associated with this level of mitigation.
- d) The appellant has requested the following:

“The appellant requests that the Board of Supervisors remove the 3:1 mitigation requirement in Condition 69, and require that the project demonstrate that the disturbed upland in the project area has been restored on a 1:1 basis and maintained for 5 years.”

Staff Response

- a) The requirement for a 3:1 mitigation ratio is not extraordinary. This is the standard ratio applied by the County to all projects for the mitigation of temporary impacts to native habitat. This ratio is designed to account for plant mortality and degradation of habitat that occurs as part of the natural processes of ecosystems. The intent of the 3:1 ratio is to ensure that the long-term results of the restoration effort achieve a minimum restored area approximately equal (i.e. 1:1) to that which was originally disturbed by the project. The application of this mitigation ratio to a project is based on good planning practices and the independent and professional judgment of the regulatory agent.
- b) The policies and ordinance embodied within the County’s General Plan, Coastal Land Use Plan, and Coastal Zoning Ordinance do not provide for differential treatment of projects based on the intent or type of proposed development. Further, the proposed project, despite the intent to provide an environmental benefit through its implementation, is not exempt from the permitting process under the County’s Coastal Land Use Plan.
- c) There are sufficient areas within and surrounding the project sites (north and south of Highway 101) to achieve the required mitigation. Creek and upland areas contiguous with, or in the vicinity of, the area impacted by the project can be used to meet the 3:1 mitigation ratio. Further, such mitigation can take the form of a combination of new plantings with removal of invasive weeds. Such weeding does not require the dedication of “physical space” to a restoration effort. There is sufficient area immediately surrounding the project sites north and south of the highway in which removal of weeds, combined with new plantings in all areas disturbed by the project, would satisfy the mitigation requirement.

An applicant’s lack of available funding is not used by the County in determining the appropriate conditions/mitigations necessary to ensure project consistency with County policies.

2. Condition No. 72: Requirement for Construction Days and Hours

Condition No. 72, as revised at the Planning Commission hearing to address the applicant’s (appellant) concerns, reads as follows:

*Construction activity for site preparation and for future development shall be limited to the hours between 7:30 a.m. and 4:30 p.m., Monday through Friday, unless P&D approves a longer period and a six (6) day work week in consultation with the applicant. No construction shall occur on weekends or State or national holidays, including, but not limited to Cesar Chavez Day, Christmas Day, Columbus Day, Independence Day, Labor Day, Martin Luther King Jr. Day, Memorial Day, Presidents Day, Thanksgiving Day and Veterans Day. No work shall occur on the afternoons preceding Memorial Day, Independence Day and Labor Day. Construction equipment maintenance shall be limited to the same hours. **Plan Requirements:** Three easily readable signs stating these restrictions shall be provided by the applicant and posted on site. **Timing:** Signs shall be in place prior to beginning of, and throughout, grading and construction activities. **Monitoring:** The EQAP monitor shall ensure that the Contractor complies with these restrictions and shall respond to complaints.*

Appellant Issues

- a) The appellant states that the condition restricts construction activity to Monday – Friday, 7:30 – 4:30.
- b) The appellant states that there are no sensitive noise receptors nearby and that construction activities would not interfere with public use of the beach.
- c) The appellant has requested the following:

“The appellant specifically requests that Condition 72 be modified to allow construction six days per week during daylight hours if deemed necessary by the applicant....The applicant should be required to notify the EQAP monitor....but prior permission of Planning and Development staff should not be required.”

Staff Response

a) The appellant is incorrect in that the statement implies that the condition is absolute with respect to days and hours of operation. The condition was revised by the Planning Commission to allow a longer (6 day) work week and extended hours (past 4:30) in advance consultation with staff. The intent of the Planning Commission was to provide flexibility to the applicant, with the expectation that a request for extended work would not be unreasonably denied.

However, at the Board’s discretion, the language of Condition No. 72 could be revised to read as follows: “Construction activity for site preparation and for future development shall be limited to daylight hours, Monday through Friday, unless P&D approves a six (6) day work week in consultation with the applicant.” This would address the applicant’s request for extended hours.

- b) The adjacent highway Vista Point parking area is frequently used by sports fishermen and other members of the public to access the beach and adjacent seawall on weekends. The same vista point and the large highway shoulder to the west of the project site are used as parking areas for private and commercial vehicles traveling southbound on Highway 101. Interference with vehicular traffic as well as noise sensitive receptors/recreational users provides a rationale for application of the standard condition restricting work days and hours.
- c) The condition was revised to allow a six (6) day work week and extended hours as requested by the applicant. However, the appellant objects to the requirement that such changes be requested by the general contractor and/or applicant’s representative and approved by staff. The condition language was revised under direction from the Planning Commission to provide flexibility to the applicant, while maintaining County oversight on the

project to ensure that project activities would not occur during days or hours when potentially significant impacts might result (e.g. holidays, predicted or actual precipitation, extreme tides, etc). Such notification of, and approval from, the County also affords staff the information needed to effectively monitor the project for compliance with the mitigations and conditions of approval, and to respond to public inquiries in an informed manner. Although the independent EQAP monitor is empowered to monitor and enforce the project conditions, they can not authorize changes to these conditions. When such modifications are requested on a project under construction, it is County staff that is held responsible.

3. Condition 78: Requirement for biological reports.

Condition of approval No. 78 reads as follows:

*Prior to commencement of any and all activities set forth in the approved Restoration Plan, the applicant shall retain a biologist from the County-approved list. Every six (6) months after initiation of the restoration plan, the biologist shall conduct surveys and provide a performance report which assesses the compliance of the restoration effort with the approved plans and performance criteria. The report shall be provided to the applicant and to the Planning and Development Department, and shall be reviewed by Planning and Development staff. The County-approved biologist shall also be on-site during all application of herbicide and shall prepare a report that specifies the type of herbicide and surfactant, the date/s of application, the quantities applied, and the areas and types of vegetation treated. This report shall be provided to both the applicant and to the Planning and Development Department. This report shall be reviewed by Planning and Development staff for consistency with the conditions of approval. **Plan Requirements and Timing:** The biologist shall be retained prior to implementation of the Restoration Plan.*

Appellant Issues

- a) The appellant considers the requirement for bi-annual reporting to be excessive. The appellant states that the “state and federal permitting agencies” only require annual reporting and thus “annual reporting should also be adequate for the County.”
- b) The appellant states that “use of a County-approved biologist to report on voluntary restoration projects should not be required”.
- c) The appellant has requested the following:

The appellant requests that the Board of Supervisors find that condition 78 is infeasible and unnecessary on a voluntary restoration project, that the applicant be required to submit copies of reports it prepares annually for the state and federal permit agencies to Planning & Development to document the project outcome.

Staff Response

- a) The receipt of reports at 6-month intervals provides a number of benefits consistent with good planning and professional practices. Assessment of compliance with restrictions/conditions embodied within the restoration plan (e.g. restrictions on herbicide or equipment use) is facilitated by the provision of bi-annual reports. The bi-annual reports allow the applicant and County staff to mutually identify and resolve problems with the restoration program (e.g. failure of specific plant species, failure of weed eradication methods, failure of plantings within specific restoration areas) in a timely fashion and recommend/approve appropriate changes to the program. In short, accountability is warranted and satisfied by this permit condition.

b & c) The Restoration Plan that is required as a condition of the project is one that will be approved by the County of Santa Barbara. The use of a County-approved biologist to implement and monitor the restoration plan is a standard condition applied to all such projects. To ensure consistency with County policies and compliance with the project conditions/mitigations, the use of a County-approved biologist is required.

Mandates and Service Levels:

Pursuant to Section 35-182.3 of Article II of Chapter 35 of the County Zoning Ordinances, the decisions of the Planning Commission may be appealed to the Board of Supervisors by the applicant, an aggrieved person or any two members of the Coastal Commission. No changes in programs or service levels are anticipated.

Fiscal and Facilities Impacts:

The costs for processing appeals of land use projects are typically provided through a fixed fee and funds in P&D's adopted budget. No fees are collected for appeals in the appeals jurisdiction of the Coastal Zone. Planning and Development offsets all costs associated with processing of the appeal, budgeted in Development Review South Division, in the Permitting and Compliance Program on page D-290 of Planning and Development's 2006/2007 fiscal year budget.

There are no facilities impacts.

Special Instructions:

Clerk of the Board shall complete noticing in the Santa Barbara News Press and shall complete the mailed noticing for the project at least ten (10) days prior to hearing (mailing labels will be attached).

Clerk of the Board shall forward a copy of the Minute Order to P&D, Hearing Support Section, Attn: Cintia Mendoza.

The Planning and Development Department will prepare the final action letter and notify all interested parties of the Board of Supervisors' final action.

Concurrence:

n/a

Prepared By:

Mark Walter, Planner (568-2852)
Development Review Division – South, Planning and Development Department

ATTACHMENTS:

- A. Planning Commission Action Letter, including Findings and Conditions of Approval, dated August 24, 2006
- B. Staff Report to the Planning Commission, dated July 28, 2006
- C. Appellant Appeal Letter

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