



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 &
Development
Department No.: 053
For Agenda Of: 1/17/2012
Placement: Departmental
Estimated Time: 1.0 hour
Continued Item: Yes
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, Ph.D., Director, Planning & Development
Director(s) (805) 568-2085
Contact Info: Alice McCurdy, Deputy Director, Development Review South
(805) 568-2518
SUBJECT: Bagdasarian Appeal of Montecito Planning Commission Denial of 10APL-00000-00016 and 09LUP-00000-00256 (Case No. 11 APL-00000-00009)

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

That the Board of Supervisors consider the appeal filed by Ross Bagdasarian, Jr. and Janice F. Karman of the Montecito Planning Commission's denial of the Bagdasarian appeal, 10APL-00000-00016, and *de novo* denial of the Bagdasarian Land Use Permit, 09LUP-00000-00256, for existing unpermitted pedestrian bridges, grading and retaining walls within an Environmentally Sensitive Habitat, located at 1192 and 1194 East Mountain Drive, in the Montecito area, First Supervisorial District; consider a modified project; and take the following actions:

1. Uphold the appeal, Case No. 11APL-00000-00009;
2. Make the required findings for *de novo* approval of the modified project, 09LUP-00000-00256, including CEQA findings, as provided in Attachment A of this Board Letter;
3. Determine the modified project is exempt from CEQA pursuant to CEQA Guidelines Section 15303(e) as provided in Attachment B of this Board Letter; and
4. Approve *de novo* the modified project Case No. 09LUP-00000-00256 with required conditions of approval included as Attachment C of this Board Letter.

Background and Summary Text:

A Land Use Permit application (Case No. 09LUP-00000-00256) was filed on June 24, 2009 to abate a Zoning Violation reported on February 10, 2009 (Case Nos. 09ZEV-00000-00042, 09ZEV-00000-00115 and 09BDV-00000-00021). The zoning violation constituted unpermitted development within, and degradation of, Environmentally Sensitive Habitat (ESH) associated with Hot Springs Creek and one of its tributaries (full details included the Board Letter dated September 6, 2011, including Attachment 6 therein).

Permit application 09LUP-00000-00256 and its associated design review application 10BAR-00000-00094 requested after-the-fact approval of all of the unpermitted development, and included a new landscape plan, planting of native replacement trees in the southeast corner of the property (the rock stockpile area) and contribution of funds to an offsite restoration project. On July 26, 2010, Planning and Development denied 09LUP-00000-00256 because the proposal was found inconsistent with a number of riparian Environmentally Sensitive Habitat policies and development standards included in the Montecito Community Plan (MCP) and Montecito Land Use and Development Code (MLUDC). The applicants appealed the denial to the Montecito Planning Commission. After a first hearing on October 27, 2010, on May 25, 2011, at the close of its second hearing, the Montecito Planning Commission denied the appeal and 09LUP-00000-00256. The applicants/appellants appealed the Montecito Planning Commission decision to your Board on June 3, 2011.

The Board of Supervisors appeal hearing originally scheduled for September 6, 2011, was continued to allow the appellant and Planning & Development (P&D) to meet and attempt to resolve project issues. P&D staff and the appellant and his representatives met on several occasions. Through the course of these meetings, the appellant argued compellingly for safe pedestrian access to the portion of their property located between Hot Springs Creek and its tributary, variously referred to as the "island" or "peninsula," to allow them use and enjoyment of that area of the property that was otherwise inaccessible. In that context, P&D and the appellant reached consensus regarding how much of the unpermitted development should be removed and what might remain, including the following: retaining the two bridges for safe pedestrian access, removing three segments of the retaining walls, lowering the height of several additional wall segments, lowering of the grade to more closely approximate the previous grade or to bring the grades flush with the new lower wall elevations, and removing the irrigated lawn and replacing it with restoration of the habitat. Please refer to Condition No. 1 of the draft LUP, Attachment C for the complete modified project description.

In addition, as a result of these meetings, the appellant modified his planting plan and plant species list (Attachments D and E). The current version of the planting plan and plant species list do not fully meet the essential restoration requirements under the MCP and MLUDC which require restoration in both the ESH and the ESH buffer with native species that would normally occur at the site. However, P&D believes that with incorporation of critical components into a final restoration plan (outlined below and included as Condition No. 5 in the draft LUP for the modified project – Attachment C), the Board of Supervisors may find the restoration plan to be adequate and consistent with the MCP ESH policies and development standards, particularly those that 1) require on-site restoration of riparian ESH and ESH buffers using native species that would normally occur at the site; 2) require restoration when the activity was a zoning violation; and 3) require protection of native oaks and specimen trees.

Design review is required for the unpermitted bridges and a BAR case number was assigned to the project, 10BAR-00000-00094. The case was scheduled for the Montecito Board of Architectural

Review (MBAR) meeting on July 26, 2010. With the consent of the applicant, the MBAR chose not to review the project given P&D's denial of the permit that day. The design issues for the project are minor and the LUP has been conditioned to require completion of design review prior to issuance of the LUP.

The critical requirements for the final restoration plan are as follows.

Area 1a: Island (Lawn area)

- Replace developed lawn area with native trees, shrubs, and grasses to provide diversity, cover, structure and function similar to adjacent upland and streamside habitat of Hot Springs Creek.
- Plant ESH buffer areas on the west side of Hot Springs Creek with fast-growing California native shrubs in order to provide visual screening and habitat cover.
- Restore removed vegetative structural elements of the degraded riparian corridor by planting one-third of required oak mitigation (56 trees) in the northern and southern portions of the "island" where oak trees were removed. This shall be accomplished by planting clusters of oak trees and densely-planted native shrubs and grasses in at least 70% of the island area; trees and shrubs shall not be pruned in these areas, and plantings shall be at a sufficient density within five years to provide protective cover for wildlife potentially moving through the riparian corridor area; planting clusters to be shown on plans.
- Open areas (i.e., no tree canopy) may be retained, but shall not exceed 30% of the island area, as measured from the edges of the retaining walls on the west to the top-of-bank of Hot Springs Creek on the east.
- Non-local California native species, as indicated on November 16, 2011 list (Attachment E), may be planted in the 30% open areas.
- Outside native cluster areas where no pruning is allowed, pruning of mature oak trees shall not exceed 20% of each individual tree on an annual basis.

Success Criteria:

- 80% success rate for container planted materials after 3 years.
- Minimum 50% increase in canopy cover (trees and shrubs) in Area 1a within 5 years (present canopy cover is approximately 20%, based on 2010 aerials).
- Removal of 50% of Myoporum hedge within 3 years; complete removal within 5 years.

Area 1b: Tennis Court Area

- No restoration is required in this area due to its degraded nature as shown in aerial photographs since 1998 and its proximity to the developed portion of the estate.

Area 2: Rock Stockpile

- Replant one-third of required coast live oak mitigation (56 of the required 168 trees) and half of required sycamore mitigation (30 of 60 trees) to replace lost canopy cover; include native understory species.

Success Criteria:

- 80% survival rate for container trees and plants after 3 years.
- Minimum 50% increase in canopy cover within 5 years.

Area 3: Tributary

- Allow native oaks and sycamores, including re-sprouting plants, to regenerate and regain size, form, and cover typical for the species.
- Retaining walls to be removed as shown on November 7, 2011 site plan; resulting slopes shall be rounded and planted with native grasses and/or low shrubs.
- At least one-third of the required oak mitigation (56 of 168 required trees) and half the required sycamore mitigation (30 of 60 required trees) to be planted in the tributary.
- “Elephant ears” may remain.

Success Criteria:

- Presence of a minimum of at least three vegetative strata (trees, shrubs, vines and herbs) along a 200 ft. length of the tributary. Measurement shall be according to the protocols described by Lee et al. 2001 (page 5-149), or as modified and previously-approved by P&D; understory species may include those proposed by appellant for the tributary on November 16, 2011 (Attachment E).
- At least 80% survival of planted oaks and sycamores after 3 years.
- At least 80% survival of understory species after 3 years.

Area 4: Hot Springs Creek

- Remove target weedy species (primarily giant reed and fennel) from on-site portions of Hot Springs Creek, tributary and confluence on APN 011-020-034.

Success Criteria:

- 100% removal of giant reed and fennel in on-site portion of the creek and its tributary within 3-5 years.
- Non-native annual grass species acceptable to remain.

“Hardscape” Elements

- “Arizona” crossing within ESH to remain unpaved and utilize erosion control BMP’s during restoration activities; crossing shall be used for restoration purposes and then abandoned.
- Upper bridge to remain as shown on appellant’s November 7, 2011 site plan.
- Lower bridge to remain as shown on appellant’s November 7, 2011 site plan.

The appellant has reviewed these critical requirements and agrees with all but two. Rather than staff’s recommended 70% trees and dense shrubs and 30% open area, the appellant prefers the opposite, a 30% trees and shrubs/70% open area distribution. Rather than splitting the oak tree restoration plantings into thirds and plant one-third in each of the island, rock stockpile area and tributary, the appellant prefers to plant one-half in the rock stockpile area and one-fourth each in the island and tributary. Staff recommends the Board follow the recommendations that staff has prepared because it will provide the most appropriate amount of restoration to achieve consistency with ESH policies and development standards.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The costs for processing appeals are partially offset through payment of a fixed appeal fee of \$643 (\$500 of which goes toward P&D costs). P&D absorbs the costs beyond the appeal fee. The total estimated time to process this appeal is approximately 175 staff hours (including 165 hours to date), which equates to approximately \$32,300. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-314 of the adopted 2011/2012 fiscal year budget.

Special Instructions:

The Clerk of the Board shall return the minute order of the hearing and a copy of the notice and proof of publication to Planning and Development, attention David Villalobos.

Attachments:

- A. Findings for approval of modified project
- B. CEQA Exemption
- C. LUP for modified project with Conditions of Approval
- D. Bagdasarian November 7, 2011 site plan and photos/plan sheet illustrating walls to be removed and lowered
- E. Bagdasarian November 16, 2011 plant list

Authored by:

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cc:

Anne Almy, Supervising Planner – Planning and Development