

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:

Prepared on: November 8, 2005
Department Name: Planning & Development
Department No.: 053
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TO: Board of Supervisors

FROM: Dianne Meester, Assistant Director
Planning and Development

STAFF CONTACT: Laura Bridley, Contract Planner (966-7260)
Steve Chase, Deputy Director, Development Review (x2520)

SUBJECT: Hearing on the appeal of the Coral Casino Preservation Committee of the Montecito Planning Commission's Approval of the Coastal Development Permit for the Coral Casino Selective Salvage Plan Case No. 05CDP-00000-00091 [Appeal Case No. 05APL-00000-00021]

Recommendation:

That the Board of Supervisors deny the appeal by the Coral Casino Preservation Committee, c/o Brandt Hawley Law Group) [Appeal Case No. 05APL-00000-00021], uphold the decision of the Montecito Planning Commission of October 28, 2005, and approve the Coastal Development Permit 05CDP-00000-00091 for the Coral Casino Selective Salvage Plan, including applicable conditions applied to that permit (Attachment A of 05CDP-00000-00091). The application involves AP No. 009-351-015 located at 1281 Channel Drive (Coral Casino), Montecito area, First Supervisorial District.

The Board of Supervisors' action should include the following:

1. Adopt the required findings for the project, included as Attachment A of this Board Letter, based on the Montecito Planning Commission approval (per MPC Action Letter dated October 31, 2005, provided in Attachment B).
2. Deny the appeal, Case No. 05APL-00000-00021, and uphold the Planning and Development Departments' approval of the Coastal Development Permit for the Coral Casino Selective Salvage Plan, Case No. 05CDP-00000-00091 and conditions of that permit (per Attachment C).

Refer back to staff if the Board takes other than the recommended action.

Alignment with Board Strategic Plan: The recommendation is primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

1. Background

The Coral Casino Historic Rehabilitation Plan was reviewed extensively in public hearings by the County Historic Landmarks Advisory Commission (HLAC), the Montecito Board of Architectural Review (MBAR), and the Montecito Planning Commission from 2002 through May 2005. The Montecito Planning Commission held three public hearings, and approved the project on May 5, 2005. The HLAC and the MBAR granted preliminary approval of the project plans and final approval of the Selective Salvage Plan on August 8, 2005. Recently, the HLAC and MBAR gave final approval of the construction plans for the project on October 10, 2005.

The Coral Casino Preservation Committee and two individuals previously appealed the Montecito Planning Commission's approval of the revised Development Plan, Case No. 03DVP-00000-00002, including consideration of the project Environmental Impact Report, 04EIR-00000-00006. This appeal was considered at a *de novo* hearing by the Board of Supervisors on July 5, 2005. The Board denied those appeals, and adopted findings and conditions of approval incorporating the previous decision maker actions.

On October 6, 2005, an appeal was filed by the Coral Casino Preservation Committee (see Attachment D) of staff's approval of 05CDP-00000-00091, the follow up Coastal Development Permit for the Selective Salvage Plan of the Coral Casino. This appeal was heard by the Montecito Planning Commission on October 28, where the appeal was denied and the CDP approved, subject to conditions.

On November 7, the Coral Casino Preservation Committee filed a timely appeal of the Montecito Planning Commission's approval of Case No. 05CDP-00000-00091 and denial of 05APL-00000-00021 (see Attachment E).

2. Project Description

The Selective Salvage Plan for the Coral Casino is the first stage of construction of the approved Rehabilitation Plan for the building. Consistent with Condition 41, the applicant retained a County-approved architect specializing in historic restoration, Architectural Resources Group. This team member has drafted a preservation protocol plan and worked with the applicant's design team in developing specifications for the Selective Salvage Plan and construction plans in progress.

The Selective Salvage Plan phase of work includes removal for adaptive reuse or reinstallation of the following elements, as indicated on the project plans:

- West wing cabanas, shelving and hardware on the second story
- East side cabanas on the first floor, shelving and hardware therein
- Removal for future reinstallation of the second floor courtyard railing
- Removal of historic siding from the existing alleyway on the east side of the building for protection, salvage and reuse.

The applicable conditions from 03DVP-00000-00002 are printed on the plan sheet PSL-0, and included as conditions in Attachment A of 05CDP-00000-00091. These include Development Plan Conditions 1, 32,33,35,39 – 46, 51, 54, 60, 61, 66, 71, 72, 75-83, 85, 87 and 92. These conditions address construction activities and mitigate impacts to historic resources, as analyzed in the project Environmental Impact Report (04EIR-00000-00006).

County Counsel has determined that no facilitation will be required prior to this appeal hearing.

3. Appeals

This appeal is being considered by the Board of Supervisors based upon Section 35-182.3 of *Article II* which states that the decisions of the Planning and Development Department on Coastal Development Permits may be to the Planning Commission.

Section 35-182.3.3. also notes:

“The appellant shall state specifically in the appeal wherein the decision of the Planning Commission or Zoning Administrator 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 or Zoning Administrator (*Amended by Ord. 4227, 6/18/96*)”

The appellant’s contentions on appeal include the points listed below with staff responses provided as well. Many of these issues were raised during the prior discretionary hearings on the Coral Casino Historic Rehabilitation Plan Development Plan (03DVP-00000-00002).

- A. Alleged Abuse of Discretion by P&D (points 1-3 of appellant’s November 7 letter): The appellant reiterates an issue raised in the previous appeals of the Coral Casino Development Plan regarding the availability of feasible project alternatives. The appellant also contends that the County’s compliance with CEQA is in question as part of a pending lawsuit and requests no action be taken on follow up permits until the lawsuit is resolved. The appellant also alleges that the appeal was not handled correctly due to its hearing at a special meeting, and also questions the noticing completed for the October 28, 2005 MPC hearing.

Response: The merits of the Coral Casino Historic Rehabilitation Plan were reviewed at length in the prior consideration of 03DVP-00000-00002. Findings regarding the infeasibility of project alternatives were adopted by the Montecito Planning Commission, Historic Landmarks Advisory Commission, and on appeal, by your Board on July 5,

2005 when it denied that appeal and approved the project. Therefore, this issue was raised and considered in the previous hearing process at length.

Article II does not prohibit the County from processing and approving Coastal Development Permits following discretionary actions, even in circumstances that include litigation over such discretionary actions. Other remedies, such as requests for injunctions, may be sought by interested parties, but absent such legal direction, the County is obligated to act upon applications filed in a timely manner.

The Montecito Planning Commission considered this appeal at a special hearing of October 28, 2005. The noticing for this hearing followed the requirements for regular hearings, in accordance with Article II, 35-181. Based on these requirements, a legal ad was published in the Santa Barbara News Press on October 18, 2005, and notices were mailed to owners within 300 feet, and occupants within 100 feet, ten days before the appeal hearing. Notice was also provided to other interested parties based on the list of individuals and organizations that testified or wrote to the Board of Supervisors at the July 5, 2005 appeal hearing. The attorney for the appellant was mailed a copy of the October 28 meeting notice and staff report.

- B. Disagreement with terminology used in Selective Salvage Plan (appellant's point 4): The appellant disagrees with P&D's description of certain work as elements that would be "removed and stored, and not demolished". The appellant disagrees with this description because the "Coral Casino Historic Compliance Review", (prepared by Architectural Resources Group, the County approved firm with architects specializing in historic preservation) introduces that document by stating "...Ty Warner Hotels and Resorts LLC (TWHR) retained Architectural Resources Group (ARG) to provide mitigation compliance monitoring to ensure that historic resources identified in the Environmental Impact Report....are protected to the greatest extent feasible during the demolition and construction of the Coral Casino..."

Response: This is a disagreement in semantics. The Coral Casino side-wall panels, dressing room doors and shelving are shown on the Selective Salvage Plans as being removed, with a general note that the all work on the plan is to be "done in accordance with a Protocol Plan prepared by ARG and approved by P&D Prior to Issuance of a CDP for demolition."

- C. Availability of working drawing prior to HLAC and MBAR review of October 10 (appellant's point 5): The appellant notes that complete construction plans for the Coral Casino project were not available for a longer period in advance of the joint meeting of MBAR and HLAC on October 10.

Response: Please note that these plans and this meeting is not the subject of this current appeal regarding the CDP for the Selective Salvage Plan (SSP). The SSP was reviewed at a joint meeting of HLAC and MBAR, and granted final approval on August 8, 2005.

At that same meeting, the two boards also gave preliminary approval to the construction plans for the project.

The SSP plans were available for review prior to the August 8 joint meeting, as were the construction plans cited by the appellant, prior to the October 10 joint meeting. It is quite common that full drawings are not available until the day of the design review meeting, and the public is welcome to participate at those design board hearings. Therefore, this case and process are consistent with County disclosure and process on other land use cases.

- D. Draft Protocol Plan as basis for CPD approval (appellant's point 6): The appellant alleges that the approval of the CDP, as memorialized in staff's Notice of Intent to Issue a CDP (see Attachment C) should not have occurred before the final Protocol Plan was completed.

Response: The County has effectively a two-step process for issuing follow up Coastal Development Permits in geographic appeals area, such as the Coral Casino. Upon completion of most of the conditions of approval, staff prepares the Notice of Intent to Issue a CDP, and this is posted for 10 days and mailed to surrounding owners/residents and interested parties. This is considered "approval" of the CDP. Certain details in the project plans may change slightly during the ensuing building division plan check process, and these are checked again prior to CDP and building permit issuance. Therefore, planning staff has another chance to review the construction plans, and related documentation, prior to the final Coastal Development Permit and building permit being issued. Therefore, the status of the Protocol Plan as draft was sufficient in staff's opinion to issue the Notice of Intent to Issue the CDP as the first step in the process.

A Note on Procedure

Should your Board uphold the decision of the Montecito Planning Commission and approve the project on a *de novo* basis, then adoption of the findings contained in Attachment A and approval of Coastal Development Permit 05CDP-00000-00091 with conditions, as contained in Attachment C, is required to finalize such action. Should your Board decide to take any action other than upholding the decision of the Montecito Planning Commission, staff will request additional time to draft revised Findings, Exemption and Conditions of Approval to reflect the action proposed by your Board.

Mandates and Service Levels:

Section 35-182.3.1 of Article II (the Coastal Zoning Ordinance) of Chapter 35 of the County Code provides that the decisions of the Planning Commission may be appealed to the Board of Supervisors. Section 35-182.3.4 of Article II further notes that appeal hearings by the Board of Supervisors shall be considered *de novo* hearings.

Pursuant to Government Code Sections 65355 and 65090, a notice shall be published in at least one newspaper of general circulation. Such Notice was published in the Santa Barbara News Press on November 12, 2005.

Pursuant to Government Code Section 65091, mailed notice required to property owners within 300 feet of the project, including the real property owners, project applicant and local agencies expected to provide essential services, shall be done at least 10 days prior to the hearing.

Fiscal and Facilities Impacts:

This project is located within the state-designated Appeals Jurisdiction of the Coastal Zone; therefore, the California Coastal Commission retains appeal authority over discretionary projects within this geographic area. The County does not charge a fee for appeals within the coastal zone per the Planning & Development Department fee schedule (Resolution No. 04-060, adopted by the Board of Supervisors on March 15, 2004). The cost of processing this appeal is budgeted in the Permitting and Compliance program of the Development Review South Division on page D-290.

Special Instructions:

Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Hearing Support Section, Attention: Cintia Mendoza.

Concurrence: None

Attachments:

- A. Board of Supervisors Findings, based on Montecito Planning Commission approval
- B. Montecito Planning Commission Action Letter
- C. Coastal Development Permit Case No. 05CDP-00000-00091, with conditions
- D. Coral Casino Preservation Committee Appeal (case 05APL-00000-00021), filed October 6, 2005, of the Notice of Intent to Approve 05CDP-00000-00091
- E. Coral Casino Preservation Committee Appeal filed November 7, 2005, of the Montecito Planning Commission's approval of 05CDP-00000-00021
- F. Staff Report to Montecito Planning Commission, October 19, 2005 for October 28 hearing
- G. Staff Memorandum to the Montecito Planning Commission dated October 28, 2005
- H. Public Comment Letters

ATTACHMENT A - FINDINGS

1.0 FINDINGS PURSUANT TO COUNTY CODE, SECTION 35-169.6.1.

- 1.1 *That the proposed development conforms to 1) the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan, and 2) with the applicable provisions of this Article and/or the project falls within the limited exception allowed under Section 35-161.7.*

Coastal Development Permit 05CDP-00000-00091 for the Coral Casino Selective Salvage Plan is based on approval of the Coral Casino project Development Plan, Case 03DVP-00000-00002. This Development Plan was approved based on findings adopted by the Montecito Planning Commission on May 5, 2005, and on appeal, by the Board of Supervisors on July 5, 2005. Finding 2.1.6 of the July 5 Findings include a statement that the Coral Casino Historic Rehabilitation Plan, including work proposed in the Selective Salvage Plan, would be consistent with the applicable provision of Article II and the Coastal Land Use Plan.

- 1.2 *That the proposed development is located on a legally created lot.*

The lot upon which the Coral Casino is located, Assessor's Parcel Number 009-353-015, has existed since 1936 as a separate and legal lot, before construction of the Coral Casino in 1937.

- 1.3 *That the subject property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of this Article, and such zoning violation enforcement fees as established from time to time by the Board of Supervisor have been paid. This subsection shall not be interpreted to impose new requirements on legal non-conforming uses and structures under Section 35-160 et seq.*

As noted in Finding 2.1.6 of the adopted Findings for the Coral Casino Historic Rehabilitation Plan Development Plan (Case No. 03DVP-00000-00002), the project would be consistent with the applicable provisions of Article II. As further noted in Finding 2.2.1, a modification for the location of a proposed equipment well in the front yard setback, and enclosure of an existing alley with building area in the eastern setback is justified based on the infrequency of use of the equipment well, and the low visibility and existing encroachment of remaining portions of the eastern side of the building.

2.0 FINDINGS PURSUANT TO COUNTY CODE, SECTION 35-169-6.2

- 2.1 *Those findings specified in Section 35—169.6.1.*

See findings a-c above

- 2.2. *That the development does not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.*

The Selective Salvage Plan would not significantly obstruct public views from public roads or affect views from a public recreation area. Further, Findings 2.1.8, and 2.4.2 address the project's consistency with public access, easements to be provided and public use of the property, as well as the project's consistency with the mass, bulk, scale and design with the surrounding neighborhoods.

- 2.3 *That the development is compatible with the established physical scale of the area.*

The Selective Salvage Plan does not affect the development's appropriate compatibility with the established physical scale of the area. Additionally, Finding 2.4.2 of the adopted Development Plan findings states the appearance of the facility would not change substantially and would remain compatible with the residential character of the surrounding neighborhood.

- 2.4 *That the development is in conformance with the public access and recreation policies of this Article and the Coastal Land Use Plan*

The Selective Salvage Plan would not alter the project's consistency with public access or recreation policies of Article II, as defined in Finding 2.1.8 of the Development Plan approval.

3.0 CEQA FINDINGS

- 3.1 Coastal Development Permit Case no. 05CDP-00000-00091, as a ministerial project, is statutorily exempt under CEQA Guidelines §15128 and all portions of the related Development Plan were analyzed in the Development project EIR (04EIR-00000-00006) pursuant to CEQA Guidelines Section §15161.