



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 (P&D)
Department No.: 053
For Agenda Of: May 22, 2007
Placement: Set Hearing
Estimated Tme: 90 minutes on 6/19/07
Continued Item: NO
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department John Baker, Director (805) 568-2085
Director
Contact Info: Dianne Black, Assistant Director (805) 568-2086
**SUBJECT: Set Hearing for the Appeal of the Planning Commission's Approval of the
Ballantyne Residence and Accessory Structures**

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

Set a hearing for June 19, 2007 to consider the appeal filed by the Gaviota Coast Conservancy (Case No. 06APL-00000-00045) of the Planning Commission's November 8, 2006 approval of the Ballantyne Residence and Accessory Structures (Case No. 06APL-00000-00019) located at 500 Farren Road, Goleta Area (APN 079-090-036), Third Supervisorial District.

Option 1 – Grant the Appeal, Deny the Project (P&D's Recommended Action):

Grant appeal Case No. 06APL-00000-00045 marked "Officially Accepted, County of Santa Barbara June 19, 2007 Board of Supervisors Exhibit No. 1," based upon the project's inconsistency with the Comprehensive Plan, Goleta Community Plan and Land Use and Development Code, and based on the inability to make the required findings.

Your Board's motion should include the following:

1. Grant the appeal, Case No. 06APL-00000-00045, and overturn the Planning Commission's November 8, 2006 decision to approve the project, Case No. 06APL-00000-00019;
2. Adopt the required findings for denial of the project, Case No. 05LUP-00000-00611, specified in Attachment A, Denial Findings, of the Planning Commission Staff Report dated September 15, 2006 (Attachment A to this Board Letter);

3. Deny the proposed project, Case No. 05LUP-00000-00611; and
4. Find that the California Environmental Quality Act does not apply to the project based on Section 15270 of the State of California's Guidelines for Implementation of the California Environmental Quality Act, titled "Projects Which Are Disapproved."

Option 2 – Apply the Requirements of CEQA, Continue the Appeal:

Direct the Planning and Development Department staff to apply the requirements of California Environmental Quality Act (CEQA) and continue the appeal, Case No. 06APL-00000-00045.

Your Board's motion should include the following:

1. Direct staff to apply the requirements of the CEQA to the project; and
2. Continue the item until staff has prepared the required environmental documents and otherwise complied with the requirements of CEQA.

Summary:

The applicant applied for a Land Use Permit for a single-family residence, guest house, barn and accessory structures on a 17-acre parcel located at 500 Farren Road, Goleta Area (Case No. 05LUP-00000-00611). A complete project description is included in Attachment B of P&D's memorandum to the Planning Commission, dated October 27, 2006 (Attachment B to this Board Letter). In summary, the project consists of an 11,498 square-foot residence with a 1,798 square-foot attached garage, an 800 square-foot guest house with a 568 square-foot attached garage, a 1,200 square-foot barn and associated grading and driveway. The residence is more than 300 feet in length and sited on a prominent ridge that is visible from Highway 101 and several other public viewing places. The project also includes an approximately 300-foot long berm immediately south of the residence and approximately 8,000 cubic yards of cut and 8,000 cubic yards of fill. The proposed landscaping includes eight oak trees and ten California white alder planted north of the residence.

The Planning and Development Department (P&D) denied the permit because the project did not comply with the applicable visual resources and hillside and watershed protection provisions in the Comprehensive Plan, Goleta Community Plan and Inland Coastal Zoning Ordinance.¹ Our concerns are presented in the Planning Commission Staff Report dated September 15, 2006 (Attachment A to this Board Letter). Our denial reflects advice provided by the South Board of Architectural Review (SBAR), which conducted a site visit and discussed the project at three separate meetings. SBAR concluded that the project did not conform to the applicable visual resources provisions. In summary, the project includes a large residence on a prominent ridge that is visible in the foreground from Highway 101, Farren Road and other public viewing places. P&D found that the scale and design of residence were not

¹ P&D and the Planning Commission reviewed the project based on the provisions in the Inland Zoning Ordinance. After the Planning Commission's hearing, the Inland Zoning Ordinance was replaced by the Land Use and Development Code. Your Board will need to base its decision on the provisions in the Land Use and Development Code since this will be a *de novo* hearing. The visual resources provisions in the Inland Zoning Ordinance (Section 35-212.1) are identical to those in the Land Use and Development Code (Section 35.30.060.A).

compatible with the character of the surrounding natural environment or subordinate in appearance to natural landforms. In addition, the residence was sited so as to intrude into the skyline as seen from public viewing places. After P&D denied the project, the applicant proposed to screen portions of the residence with an approximately 300-foot long berm. P&D concluded that this berm would not result in a project that conforms to the visual resources provisions. Contrary to the hillside and watershed protection provisions, the berm also would not minimize grading or preserve natural landforms as seen from public viewing places.

The applicant appealed P&D's denial to the Planning Commission (Case No. 06APL-00000-00019). On October 4 and November 8, 2006, the Planning Commission conducted public hearings and ultimately voted three to two to grant the applicant's appeal and approve the project. As part of this decision, the Planning Commission modified the project and imposed conditions of approval in order to mitigate the visual impacts of the project and find the project consistent with the applicable visual resources and hillside and watershed protection provisions (see enclosed Planning Commission action letter, dated October 6, 2006) (Attachment C to this Board Letter). In particular, the Planning Commission required the applicant to reduce the height of the berm by one to two feet, site the residence 20 to 30 feet north of the proposed location, plant trees to screen the north side of the residence and submit an exterior lighting plan. The Planning Commission incorporated these modifications into the project description and conditions of approval for the project (see enclosed Planning Commission action letter, dated November 13, 2006) (Attachment D to this Board Letter). The Planning Commission also found that this was a ministerial project and for that reason concluded that it was statutorily exempt from the California Environmental Quality Act (CEQA). This CEQA exemption decision was based on the statement in the County of Santa Barbara's Guidelines for the Implementation of the California Environmental Quality Act that states land use permits, except for major projects, are presumed to be ministerial. Section 15268 of the State of California's Guidelines for Implementation of the California Environmental Quality Act states, "Ministerial projects are exempt from the requirements of CEQA."

The Gaviota Coast Conservancy appealed the Planning Commission's decision to approve the project (Case No. 06APL-00000-00045). The appeal states that the project is inconsistent with the applicable visual resources and grading provisions (Attachment E to this Board Letter). It also asserts that the project involved discretionary actions and as a result was not exempt from CEQA. County Counsel reviewed the question of how CEQA applies to this project and reached the following conclusions:

- Section 15268 of the State of California's Guidelines for Implementation of the California Environmental Quality Act states that ministerial projects are statutorily exempt from CEQA;
- County of Santa Barbara's Guidelines for the Implementation of the California Environmental Quality Act states that land use permits, except for major projects, are presumed to be ministerial;
- Prior to action by the Planning Commission, P&D properly concluded that this project was a ministerial project that was statutorily exempt from CEQA; and
- The Planning Commission's actions of modifying the project and imposing conditions of approval to bring the project into compliance with the visual resources and hillside and watershed protection provisions of the Comprehensive Plan, Goleta Community Plan and Inland Zoning Ordinance -- including moving the proposed residence from its previous location and changing the dimensions

of the term -- converted the process from ministerial to discretionary, so that CEQA's ministerial exemption no longer applies. *Friends of Westwood* (1987) 191 Cal.App.3d 259.

Given that the project is not exempt from CEQA, County Counsel identified two options for your Board at this point in the appeal process. First, your Board could follow P&D's recommendation and deny the project. You may take this action without further CEQA review because Section 15270 of the State of California's Guidelines for Implementation of the California Environmental Quality Act states that CEQA does not apply to projects that a public agency rejects or disapproves. Alternatively, your Board could suspend action on the appeal and direct staff to prepare the necessary environmental documents and otherwise subject the project to CEQA. After staff completes this task, your Board may consider the environmental documents and approve, conditionally approve or deny the project.

Background:

The southern tip of the subject parcel (less than 2 acres) is located within the Coastal Zone. The balance of the parcel and the entire project are located within the Inland Area. Accordingly, the project is subject to the applicable policies and provisions in the Comprehensive Plan and the Land Use and Development Code. The entire parcel is zoned Agriculture II, 100-acre minimum lot area (AG-II-100) under both the Coastal Zoning Ordinance and the Land Use and Development Code. The parcels that adjoin the subject parcel are also zoned AG-II-100.

The applicant recently placed a mobile home and two 5,000 gallon water tanks on the subject parcel without obtaining the required zoning and building permits (Case No. 07ZEV-00000-00034). The applicant has submitted permit applications to address these zoning violations (Case Nos. 07LUP-00000-00184 and 07CUP-00000-00020).

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The appellant's cost for processing an appeal to the Board of Supervisors is a \$443 fixed fee (County of Santa Barbara Land Development Fees, effective January 15, 2007). The remaining cost of processing the appeal is budgeted in the Permitting and Compliance Program of the Development Review Division – South on page D-290 of the adopted budget for Fiscal Year 2006/07. Estimated staff time to prepare the Board Letter and prepare for and attend the hearing is approximately 75 hours. If the Board directs staff to prepare the required environmental documents, costs are estimated to be approximately \$5,000.00, borne by the applicant.

Staffing Impacts:

Legal Positions:
N/A

FTEs:
N/A

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on June 19, 2007. The notice shall appear in the Santa Barbara News Press. The Clerk of the Board shall fulfill the noticing requirements in Section 35.106.020 of the Land Use and Development Code. P&D will provide mailing labels for the mailed notice. A minute order of the hearing and a copy of the notice and proof of publication shall be returned to P&D, attention Cintia Mendoza, Board Assistant Supervisor.

Attachments:

Attachment A: Planning Commission Staff Report for Appeal of Land Use Permit Denial for Ballantyne Residence and Accessory Structures, dated September 15, 2006

Attachment B: Memorandum from Dianne Black to Planning Commission, dated October 27, 2006

Attachment C: Planning Commission Action Letter, dated October 6, 2006

Attachment D: Planning Commission Action Letter, dated November 13, 2006

Attachment E: Appeal of Ballantyne Residence Approval by Planning Commission, Marc Chytilo representing Gaviota Coast Conservancy, dated November 20, 2006

Attachment F: Public Comment Letters to Planning Commission

Authored by: Allen Bell, Planner III, Development Review Division – South
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