

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: 1/08/02
Department Name: Planning & Development
Department No.: 053
Agenda Date: 1/15/02
Placement: Departmental
Estimate Time: 1.5 hours: 20 minute staff presentation, 1 hour 10 minutes testimony
Continued Item: YES
If Yes, date from:
Document FileName: G:\GROUP\DEV_REV\WP\DP\99_CA SES\99DP051\APPEAL\BOS DPTL 2.DOC

TO: Board of Supervisors

FROM: Rita Bright, Deputy Director
Secretary to the Planning Commission

STAFF CONTACT: Jackie Campbell, Supervising Planner (568-2076)
Anne Almy, Planner III (568-2053)

SUBJECT: Appeal of the Residences at Sandpiper
Planning & Development Case Numbers TM 14,541 & 99-DP-051

Recommendation(s):

That the Board of Supervisors deny the appeals of Wanda Michalenko, representing the Santa Barbara Urban Creeks Council, and Diane Conn, representing Citizens for Goleta Valley, and conditionally approve Case Nos. TM 14,541 and 99-DP-051 marked "December 4, 2001, Board of Supervisor Exhibits 1-5" based upon the project's consistency with the Comprehensive Plan, including the Coastal Plan and the Goleta Community Plan, and based on the ability to make the required findings and certify 01-SD-02, supplement to 94-EIR-9.

Your Board's motion should include the following:

1. Adopt the required findings for the project, including CEQA findings and Statement of Overriding Considerations, specified in Attachment A of this memo;
2. Certify the Supplemental Environmental Impact Report (01-SD-02) and adopt the mitigation monitoring program contained in the conditions of approval specified in Attachments B and C of this memo;

3. Grant the requested modifications to ordinance standards 1) to allow minimum residential front yard setbacks measuring five feet from the right of way of internal private roadways rather than 20 feet and 2) to allow the parking required for the studio dwelling units to be uncovered rather than covered;
4. Approve Vesting Tentative Tract Map 14,541 subject to the conditions included as Attachment B of this memo;
5. Approve 99-DP-051 subject to conditions included as Attachment C of this memo.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion: See Attached.

Mandates and Service Levels:

The appeals were filed pursuant to Section 35-182.3 of Article II of Chapter 35 of the County Code, which states that the decisions of the Planning Commission may be appealed to the Board Supervisors within 10 days after the Planning Commission's action.

Pursuant to Government Code Sections 65355 and 65090, a notice shall be published in at least one newspaper of general circulation. Mailed notice required to property owners within 300 feet of the project, including the real property owners, project applicant, and agencies expected to provide essential services shall be done at least 10 days prior to the hearing (Government Code Section 65091).

Fiscal and Facilities Impacts:

No filing fee was required for this project since this project is appealable to the California Coastal Commission under the Coastal Zoning Ordinance, Section 35-182.4.2. Costs associated with unfunded appeals are included in Planning & Development's approved budget.

Special Instructions:

The Clerk of the Board shall complete noticing for the project in a newspaper of general circulation in the County of Santa Barbara ten (10) days prior to the hearing (mailing labels were previously provided).

Concurrence:

N/A

EXECUTIVE SUMMARY AND DISCUSSION

On December 4, 2001, at the conclusion of the first Board of Supervisors' (BOS) departmental hearing on this matter, your Board took action to conceptually approve a residential development of approximately 109 units on the project site as illustrated in BOS exhibits 1-5 dated December 4, 2001. Staff was directed to return with revised findings and conditions for approval (please see attachments A, B and C).

Summary

Discussion at the hearing of the 4th focussed primarily on appeal issues related to native grasses (specifically, adequacy of mapping and assignment of value as habitat) and red legged frogs (specifically, adequacy of environmental analysis to date). At the close of the hearing, your Board requested that fresh peer review of the resource mapping and assessment of impacts, included in the DFSEIR, occur prior to your next hearing on this matter, and directed the applicant and appellants to cooperate in this regard. Your Board also requested that staff provide the following:

1. Record of communications between CCC and P&D staff regarding the proposed project;
2. Clarification regarding relationship of proposed residential project to the prospective desilting of the UPRR culvert;
3. Clarification of Public Works Transportation Division requirements of the proposed project for sidewalks along Hollister Avenue;
4. Summary of oral testimony heard by the PC updating information regarding electromagnetic fields (EMF) associated with the Ellwood Peaking Station;
5. Confirmation of proposed affordability levels of the 22 affordable housing units and current sales prices as mandated by the County's Housing Element; and
6. Details of the proposed landscape management plan.

Discussion

Native Grasses:

On December 13, 2001, at the applicant's request, Dr. Robert F. Holland¹, accompanied by the County's EIR consultant Dr. Tom Mulroy and applicant representatives, performed a field review of the mapping of native grasses, prepared for the County by SAIC and providing the basis for analysis included in the DFSEIR and the staff report. On December 17, 2001, again at the applicant's request, Dr. V.L. Holland² and graduate student Michael Curto, accompanied by Dr. Tom Mulroy and applicant representatives, performed a similar field review of native grasses on the project site. Both Drs. Robert and V.L. Holland were asked to form independent opinions on the significance of the grasses as habitat and to provide those opinions in the form of written reports to the applicant for submittal to the County. (Please see Attachment D.) To summarize briefly, both experts concur with the mapping of native grasses and assessment of ESH included in the DFSEIR. The reports discuss the absence of diversity in the grasslands and the distinct separations between the patches of native grasses dominated by introduced forbes. Upon review of the site's land use history

¹ Ph. D.: Ecology. Geobotanical phenomenologist.

² Ph. D.: Botany. Professor and Chair, Plant and Restoration Ecology, Department of Biological Sciences, Cal Poly State University, San Luis Obispo.

(aerial photographs), Dr. Robert Holland concludes that the native grasses on site are relictual. Dr. V.L. Holland discusses the proposed installation of native grasses, on the eastern portion of the site, within the emergency access where it traverses the open space area between the large stand of purple needlegrass and the smaller stands to the east, and concludes that such plantings would provide for interconnection between the currently separate areas of native grasses.

Red-Legged Frog:

On December 12, 2001, at the applicant's request, Dr. Galen B. Rathbun³, accompanied by County's EIR consultants Dr. Tom Mulroy and Ted Mullin and a representative of the applicant, performed a field assessment of the potential for red legged frog habitat on the project site. Dr. Rathbun was asked to submit a report to the applicant for distribution to the County summarizing his independent opinion of the significance of the site as habitat and assessing potential impacts from the residential project on the species. (Attachment D.) In summary, Dr. Rathbun concludes 1) that "there is no perennial or seasonal habitat on the property suitable for red-legged frogs", 2) that the DFSEIR, including mitigation measures, is reasonable, 3) that the contents of the frog survey report are reasonable and that he agrees with the results and 4) that proposed changes to the property will not create habitats normally used by red-legged frogs.

On December 18, 2001, at the applicant's request, Bridget Fahey, of the Fish and Wildlife Survey, accompanied by Ted Mullin and a representative of the applicant, performed a field visit to the project site with the goal of obtaining first hand familiarity with the site and its context. A letter from Ms. Fahey is forthcoming and will be submitted to your Board upon its receipt by P&D staff.

Reports were received by the County on January 7, 2002 and distributed to the appellants for review. It is staff's understanding that the applicant and appellants will meet to discuss the contents of these reports prior to your Board's January 15, 2002 hearing on this matter at which time staff will summarize the reports for your Board as well as any concurrences reached during this applicant/appellant meeting.

CCC/P&D Interface:

Following is a chronology of CCC and P&D interface on this project:

- 5/25/01: NOP issued; CCC included on mailing list.
- 6/28/01: Comment period closed; no comments received from CCC.
- 7/5/01: Telephone conversation between Anne Almy (P&D) and Sabrina Haswell (CCC) regarding wetland issues.
- 7/6/01: DSEIR circulated; CCC included on mailing list.
- 8/16/01: P&D informed of office meeting between CCC staff and applicant to review project and discuss policy issues related to environmental resources.
- 8/20/01: Comment period closed; no comments received by P&D from CCC.
- 9/5/01: Site meeting between CCC staff and County's consulting biologists.
- 9/7/01: Notice of PC hearing and proposed final SEIR issued; CCC included on mailing list.

³ California Academy of Sciences, expert on red legged frogs. Former employee of the National Biological Survey of the United States Fish and Wildlife Service.

9/17/01: P&D informed that applicant faxed frog survey and DFSEIR biology section to CCC staff.
9/18/01: Letter from CCC staff received by P&D. Telephone conversation between Almy and Haswell regarding contents of letter.
9/24/01: 9/17/01 PC action letter issued and copied to CCC.
9/26/01: P&D staff arranged conference call with CCC staff for 10/2/01.
10/2/01: Conference call between P&D staff, SAIC biologists and CCC staff and biologists to discuss wetland, grassland and red legged frog issues.
10/4/01: 10/3/01 PC action letter issued and copied to CCC.
10/19/01: 10/17/01 PC action letter issued and copied to CCC.
11/8/01: 10/31//01 PC action letter issued and copied to CCC.
±11/12/01: P&D verbally notified Haswell that appeals had been filed.
±11/20/01: Notice of 12/4/01 BOS hearing issued; CCC included on mailing list.

UPRR Culvert:

The westernmost tributary of Devereux Creek has historically flowed only intermittently with its mapped source located in the area now developed as Winchester Commons. Drainage associated with Winchester Commons was engineered and constructed to approximate historic flow patterns as well as historic levels of flow, post-development. While the stream's headwaters continue to flow from Winchester Commons into a 36 inch culvert underlying Hwy. 101, the outlet of the next downstream culvert (lying beneath the UPRR railroad tracks) is silted and plugged. As a result, waters are diverted from their historic course south and east through Devereux Creek to flow westerly along the northern side of the railroad tracks where ponding and outfall occur opportunistically. Diverted stream waters, swollen by winter storms have flooded U.S. Hwy. 101 resulting in CalTrans' request of the UPRR to abate the hazard and desilt the culvert; the schedule for UPRR's action in this regard is unknown.

Due to the diversion of upstream waters, Devereux Creek is typically dry on the project site. As a result, the water regime for the project's proposed landscape restoration plan is designed to be dependant exclusively on projected runoff from the project site and not at all on upstream flows in the Creek. In light of ownership realities as well as the proposed project's functional independence from the reintroduced stream flows, desilting the UPRR culvert is a separate and distinct project, independent of the Residences at Sandpiper, that will require a separate permit and its own environmental review. Nevertheless, in light of the prospective reintroduction of headwaters into the historic stream channel, the applicant has initiated and pursued cooperative planning with UPRR for reintroduction of stream flows into the Devereux system. Measures for which the Residences at Sandpiper would be responsible in this regard include 1) recontouring the northern portion of the steam bed on the project site to allow waters outletting from the culvert to flow downstream and 2) selecting plant materials that will, upon establishment, survive on both the water that would be available if the project were built under current hydrologic circumstances as well as on the increased water anticipated in association with desilting the culvert. Proposed condition 12 requires the applicant's continued cooperation in this regard. The applicant's attorney's letters to Javier Sanchez, Manager, UPRR Track Management, dated December 20, 2001 and September 28, 2001 are testimony to the applicant's cooperation to date (attachment E). Cooperative planning for renewed stream flow through the western tributary of the Devereux would result in a net positive benefit to the Devereux Slough system as a whole.

Hollister Avenue Sidewalk Improvements:

Public Works Transportation Division condition letter dated September 18, 2001, specifies that Department's exaction of standard infrastructure development along the proposed project's Hollister Avenue frontage. Rob Eaton, representing the Department, has confirmed Public Works' preference for concrete sidewalks (personal communication, December 4, 2001).

Land use laws limiting development within coastal zone wetlands and their buffers pertain to both public and private projects; County Counsel will work with Public Works staff to ensure that exactions are consistent with law. Staff anticipates use of decomposed granite or crushed shale paving material for construction of the sidewalk, rather than concrete. For purposes of clarification, your Board may specify use of alternative paving materials in your approval of the project.

Electromagnetic Fields:

The DSFEIR prepared for the proposed project assumes a worst case scenario of the facility's continuous operation at current emergency loading capacity (500 A) whereby the eastern \pm 20 feet of the 12 structures located along Las Armas Road would be exposed to EMFs of 2 mG; the westerly portions of all of the units would be affected by EMF of 1 mG. The underlying assumption supporting the DFSEIR's analysis was made without consideration of existing regulatory controls held by APCD effectively limiting electrical production (and hence EMF emissions) at the facility. Active APCD permits, however, restrict operations to levels well below those assumed under this scenario and proposed setbacks would be adequate to remove homes from areas affected by elevated levels of EMFs.

The Reliant Electrical Peaking Facility is located on the east side of Las Armas Road directly across from the project site. The facility is regulated by the County Air Pollution Control District which currently restricts operations to two, 27 megawatt turbines for a total of 200 hours per year maximum. In the event that Reliant were interested in increasing power generation at the facility, the facility's APCD Permit to Operate and Authority to Construct would both require modification. Such permit modifications would be considered projects under CEQA and hence, any proposal to increase power generation would first be evaluated for potential environmental effects in a public forum; analysis would necessarily include potential impacts to Sandpiper residences located across Las Armas from the facility.

Conditions of approval requiring buyer beware statements regarding the adjacency of the facility to these units would be adequate to educate prospective homeowners of 1) the potential risk associated with EMF and 2) their ability to affect the APCD permit modification process.

(Of note in this regard is the elimination of 12 units, under the Environmentally Superior Alternative (ESA) in the DFSEIR, in response to this worst case analysis. With no environmental basis for the elimination of these units, the ESA would actually include a total of 97 units, or only eight fewer than that currently proposed by the applicant.)

Affordability Levels:

The project's 22 affordable units offered under the Housing Element Inclusionary Program are proposed exclusively at the upper moderate income level, consistent with the specifics of the program. Staff has confirmed with comprehensive planning affordable housing staff that there is a demonstrated critical need for housing at every affordability level in the South Coast Housing Market Area. Nevertheless, in light of Housing Element goals to provide a variety of housing types affordable to all economic segments of the population, staff recommends that your Board approve a modified project wherein three units would be offered at the low income level, three at the lower moderate income level and the remaining 14 at the upper moderate income level. The Housing Element's, 2001 Housing Income and Price Guidelines are included in this memo as attachment F.

Landscape Management Plan:

Attached, please find *The Residences at Sandpiper Vegetation Enhancement Plan Implementation Report* (attachment G). Staff is currently having this document peer reviewed by our staff biologist in association with the applicant's submittals for final map clearance to ensure that the Plan will provide the necessary maintenance and management practices needed to sustain the site landscaping and restoration over time.

Attachments:

- A.1 Findings
- A.2 Comprehensive Plan consistency analysis
- B. TM 14,541 conditions of approval
- C. 99-DP-051 conditions of approval
- D. Reports by Drs. Robert Holland, V.L. Holland and Galen Rathbun; curriculum vitae of Drs. Robert Holland, V.L. Holland and Galen Rathbun; and a schedule of site visits post 12/4/01.
- E. 12/20/01 and 9/28/01 letters from Hollister & Brace to UPRR
- F. 2001 Housing Income and Price Guideline
- G. The Residences at Sandpiper Vegetation Enhancement Plan Implementation Report