



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  
Department No.: 053  
For Agenda Of: February 18, 2014  
Placement: Set hearing on 2/18/14  
for 3/4/14  
Estimated Time: 1 hour on 3/4/14  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Department Glenn Russell, Ph.D  
Director, Planning and Development, 568-2085  
Contact Info: Alice McCurdy, Deputy Director, Development Review Division,  
934-6559  
**SUBJECT: Hearing to Consider the Appeal of the Beach Club Project, First Supervisorial  
District**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

N/A

**Recommended Actions:**

On February 18, 2014, set a hearing for March 4, 2014 to consider Case No. 13APL-00000-00029, the Summerland Citizens' Association Appeal of the County Planning Commission's approval of Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054 for the Beach Club project.

On March 4, 2014, staff recommends that your Board take the following actions:

1. Deny the appeal, Case No. 13APL-00000-00029;
2. Make the required findings for the project, including CEQA findings, included as Attachment 2;
3. Adopt the Mitigated Negative Declaration 13NGD-00000-00012, included as Attachment E of the Planning Commission Staff Report dated November 15, 2013 (Attachment 4); and
4. Grant de novo approval of Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054, subject to Conditions of Approval included in Attachments B, C, and D of the Planning Commission Action Letter dated January 23, 2014 (Attachment 3).

Alternatively, refer back to staff if the Board takes other than the recommended actions.

The project site is located at 2825 Padaro Lane in the Summerland area, First Supervisorial District. The applications involve AP No. 005-260-018.

### **Summary:**

Ana Citrin (Law Office of Mark Chytilo) timely filed an appeal on December 16, 2013 of the Beach Club project approved by the County Planning Commission on December 4, 2013 (Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054). The appeal was filed on behalf of the Summerland Citizens' Association, Reeve Woolpert and Tom Evans. The Beach Club project consists of three main elements: (1) a Tentative Parcel Map to divide 10.25 acres into two lots of 3.02 and 7.23 acres on property zoned 3-E-1; (2) legalization of grading conducted without a permit; legalization of as-built modifications to a previously approved habitat restoration plan; removal of existing legal nonconforming dwellings; removal of a play structure, retaining wall and well located within the riparian setback; capping of significant cultural resources; and installation of a new fence; and (3) construction of a new single family residence and associated fencing and landscaping.

### **Background:**

A Draft Mitigated Negative Declaration was prepared to evaluate the impacts of the project and was circulated for public review on August 9, 2013. The applicant subsequently revised the project to address comments raised by area residents regarding the adequacy of the MND and impacts of the project. These project changes included relocating the house and both development envelopes to be more than 71 feet from the bluff top and redesigning the house to remove the cantilevered element. The project description was also modified to more clearly state what type of development would be allowed outside of the envelopes and within the riparian setback. Language was added to the MND regarding the utility of placing rock features within the riparian setback to facilitate revegetation and prevent erosion. The MND was also revised to more accurately describe the existing vegetation along Padaro Lane and the limited, filtered blue water public views of the ocean from Padaro Lane.

The Proposed Final MND (MND, included as Attachment E of Attachment 4 of this Board Letter) concluded that the project would result in significant but mitigable impacts in the following issue areas: Aesthetic/Visual Resources, Air Quality, Biological Resources, Cultural Resources, Fire Protection, Geologic Resources, Noise and Water Resources. On December 4, 2013, after hearing substantial testimony, the Planning Commission voted 4-0 (Blough absent) to approve the project and find that the Revised Final MND was adequate environmental review under CEQA.

### **Appellant Issues and Staff Responses:**

The appellant submitted a letter (included with Attachment 1 of this Board Letter) with the application appealing the December 4, 2013 Planning Commission approval of Case Nos. 12TPM-00000-00006, 11CDH-00000-00006, and 11CDH-00000-00054. The letter identifies three primary issues as reasons for the appeal. Staff's responses are presented after a summary of each appeal issue, below.

#### **Appellant Issue #1, Policy and Ordinance Consistency**

**Appellant Issue #1.1, Draft Summerland Community Plan Update.** The appellant states that neither the Staff Report nor the MND analyze the project's consistency with the draft Summerland Community

Plan update. The applicant contends that such analysis is required by Coastal Zoning Ordinance (CZO) Section 35.169.4.1.e.

**Staff Response to Issue #1.1, Draft Summerland Community Plan Update:**

CZO Section 35.169.4.1.e states (underline emphasis added):

***Section 35-169.4 Processing.*** (Amended by Ord. 4584, 11/22/05; Ord. 4594, 03/05/2008; Ord. 4595, 03/05/2008)

***1. Coastal Development Permits for development that is not appealable to the Coastal Commission in compliance with Section 35-182 (Appeals) and is not processed in conjunction with a Conditional Use Permit or Development Plan. This Section provides the processing requirements for applications for Coastal Development Permits that are not subject to Section 35-169.4.2 or Section 35-169.4.3 below.***

- e. If a Coastal Development Permit is requested for property subject to a Resolution of the Board of Supervisors initiating a rezoning or amendment to this Article, a Coastal Development Permit shall not be approved or conditionally approved while the proceedings are pending on such rezoning or amendment unless the proposed uses or structures conform to both the existing zoning and existing provisions of this Article and the rezoning or amendment initiated by the Board of Supervisors, or unless a Preliminary or Final Development Plan was approved by the County before the adoption of the Board's resolution and the proposed uses or structures are in conformance with the approved Preliminary or Final Development Plan.*

The Board did not initiate “a rezoning or amendment to this Article” (i.e. the Coastal Zoning Ordinance) for the SCP. Rather, Long Range Planning’s 2007-2008 Annual Work Program listed several potential new projects, including “Update Summerland Circulation Element and Design Guidelines.” The Annual Work Program did not provide any additional details and did not specifically initiate any rezoning or amendment to the Coastal Zoning Ordinance for Summerland. On June 15, 2007, the BOS adopted a resolution (No. 07-183) adopting the proposed budget for the 2007-2008 fiscal year. The proposed budget included funding for the potential new projects listed LRP’s 2007-2008 Annual Work Program, including “Update Summerland Circulation Element and Design Guidelines.”

In summary, when the BOS adopted the 2007-2008 budget, they approved the funding and approved P&D to work on the update, but did not initiate a rezone or amendment to the CZO for Summerland. Therefore, the provisions of CZO Section 35.169.4.1.e do not apply. As a result, the proposed project is not required to be consistent with the policies and development standards of the proposed new draft Community Plan that is neither adopted nor effective. Instead, the project must be consistent with the policies and development standards of the existing SCP.

**Appellant Issue #1.2, Policy and Ordinance Compliance.** The appellant also states that the project does not comply with Summerland Community Plan and Local Coastal Plan policies and Coastal Zoning Ordinance requirements regarding (a) Parks, Recreation and Trails, and (b) Visual Resources.

**Appellant Issue #1.2 (a) Parks, Recreation and Trails.** The appellant states that the project is inconsistent with the following ordinance provision and policies pertaining to Parks, Recreation and Trails:

*Summerland Community Plan Policy PRT-S-2. In compliance with applicable legal requirements, all opportunities for public recreational trails within those general corridors adopted by the Board of Supervisors as part of the Parks, Recreation and Trails (PRT) maps of the County Comprehensive Plan (and this Community Plan) shall be protected, preserved and provided for during and upon the approval of any development, subdivision and/or permit requiring any discretionary review or approval.*

*Coastal Zoning Ordinance Section 35-63. Coastal Trails. Easements for trails shown on the Santa Barbara County Comprehensive Plan Parks, Recreation and Trails (non-motorized) maps, shall be required as a condition of project approval for that portion of the trail crossing the lot upon which the project is proposed.*

*Coastal Land Use Plan Policy 7-25<sup>1</sup>. Easements for trails shall be required as a condition of project approval for that portion of the trail crossing the parcel upon which the project is proposed.*

**Staff Response to Issue #1.2 (a), Parks, Recreation and Trails:**

- i. Specifically, the appellant contends that the project site contains a mapped “proposed off road trail”.

Parks, Recreation and Trails Map PRT-2, adopted with the Comprehensive Plan by the Board of Supervisors in 1980, identifies the subject 10-acre property as a “proposed park”. Map PRT-2 also depicts a “proposed off road trail” along the beach. The proposed trail is located outside of and below the subject parcel (i.e. not along the creek corridor as asserted by the appellant).

Coastal Land Use Plan Table 3-5, *Summary of LCP Access and Recreation Proposals*, recommends a “vertical access corridor” in the Carpinteria planning area at Padaro Lane, and a “moderate use recreation area” at Loon Point in the Summerland planning area. Finally, Table 5 of the Land Use Element of the Comprehensive Plan, *Proposed Parks and Joint Use Facilities*, identifies “Site # 3, 11 acres, Loon Point” as an area for walking and beach use; this is consistent with Map PRT-2’s designation of the entire property as a proposed park.

Based on this information, the project site does not contain a “proposed off road trail”, although one is designated along the beach below and separate from the subject parcel.

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<sup>1</sup> The appeal letter incorrectly identified this policy language as CLUP Policy 7-26. It is correctly referenced here as Policy 7-25.

- ii. The applicant further states that Policy PRT-S-2 requires that the “proposed off road trail” be preserved, protected and provided for as part of this discretionary project.

As shown above, Summerland Community Plan Policy PRT-S-2 applies to “*corridors adopted by the Board of Supervisors as part of the Parks, Recreation and Trails (PRT) maps of the County Comprehensive Plan (and this Community Plan)*”. SCP Figure 15, *Trail, Open Space and Vista Map*, identifies the Toro Creek Corridor as a “possible future trail”. However, the trails identified and adopted as part of the Summerland Community Plan were never adopted as part of the official Comprehensive Plan PRT maps. Therefore, this requirement is not applicable.

- iii. Finally, the applicant states that that the CZO Section 35-63 and CLUP Policy 7-26 require that an easement for the portion of the “proposed off road trail” crossing the project lot be required as a condition of project approval.

As discussed above, there is no “proposed off road trail” crossing the project lot.

In summary, the entire privately owned approximately 10-acre property is identified as a “proposed park” or “moderate use recreation area” in the Coastal Land Use Plan and Comprehensive Plan PRT maps. The PRT maps also identify a “proposed off road trail” along the beach below the property. The “possible future trail” along the creek corridor as identified in the Summerland Community Plan was not adopted as part of the Comprehensive Plan PRT maps.

Since the 1980 adoption of the Comprehensive Plan, the courts have narrowed the ability of local jurisdictions to exact vertical and horizontal access easements to the beach. An exaction is dependent on an essential nexus, where the condition has a relationship to the impact the project would have on the surrounding community. In addition to the essential nexus requirement, the exaction must be roughly proportional in nature and extent to the impact of the proposed development.

In this case, the creation of one net new lot on private property, consistent with the zoning, would not place an additional burden on the public trail system. Further, there is no documented public use of the trail, which precludes any negative effect that the lot split might have on public beach access. Therefore, the Parks Division of the Community Services Department does not request, nor does P&D staff recommend, exaction of a trail.

**Appellant Issue #1.2 (b) Visual Resource Protection.** With regard to Visual Resources, the appellant states that the project is inconsistent with the following three policies:

***CLUP Policy 4-3.*** *In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment, except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape; and shall be sited so as not to intrude into the skyline as seen from public viewing places.*

***Coastal Act Policy 30251.*** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas to minimize the alteration of natural land*

*forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

***Summerland Community Plan Policy VIS-S-3.*** *Public views from Summerland to the ocean and from the Highway to the foothills shall be protected and enhanced. Where practical, private views shall also be protected.*

**Staff Response to Issue #1.2 (b) Visual Resource Protection:**

The appellant states that neither the MND nor the Staff Report reference Policy VIS-S-3. As a result of public comments by the appellant, VIS-S-3 was discussed during the Planning Commission hearing of December 4, 2013. Staff stated that the proposed project would be consistent with this policy for several reasons. From Padaro Lane, filtered blue water views are available to the public through the existing myoporum hedge along the road. Also, the large parcel sizes, large area excluded from future development, and the imposition of development envelopes creates a situation where future construction of two new SFDs would not significantly interrupt the existing, filtered blue water views. The Planning Commission's motion acknowledged the project's consistency with this policy as addressed orally by staff at the hearing. The Commission's determination regarding this policy is reflected in the Action Letter dated January 23, 2014 (Attachment 2 of this Board Letter).

The appellant also states that the project documents rely on a flawed rationale for determining consistency; and that the MND and Staff Report do not disclose that the site is located within a view corridor identified in the Summerland Community Plan, or that it is visible from the railroad.

The SCP, which was adopted in 1992, notes the following: "From the Padaro Lane area, a view corridor exists of the foothills to the north and of the ocean and Loon Point to the south and west" (p. 137, third paragraph). However, no figures or maps in the Summerland Community Plan show the project site as a view corridor. In the 22 years since adoption of the SCP, hedges and other vegetation have grown along the south side of Padaro Lane. Today's public views of the ocean in the vicinity of the project are extremely limited, consisting of heavily filtered blue water views through the mature myoporum hedge at the property line and the eucalyptus trees along the south side of the railroad corridor. This condition is the current setting and was used as the baseline for the environmental and policy analysis.

Of the two permits approved for the lots immediately to the west of the subject parcel, only one was conditioned to preserve a view corridor, and that condition only pertained to the western property line of assessor's parcel number 005-260-012, defining and preserving the important public view to the ocean from Padaro Lane. No other projects along this portion of Padaro Lane have been required to maintain or create a view corridor. Because there is no mapped view corridor over the lot, there is no nexus to require retention or improvement of the current, limited public views across the site. Upon deliberation, the Planning Commission's approval did not include a condition on the view corridor.

The proposed project is, and will continue to be, consistent with all of the applicable policies of the Summerland Community Plan. With regard to CLUP Policy 4-3, the filtered public views of blue water from Padaro Lane and the railroad corridor are seen across a generally level bluff. The proposed single-family dwelling associated with permit no. 11CDH-00000-00054 is designed to be minimally obtrusive in terms of its height, size, and orientation on the landform. As required by SCP policies for rural

properties, the average height of the proposed residence would be less than 16 feet. The residence has already undergone conceptual design review and must receive final design approval from the South Board of Architectural Review prior to permit issuance. In addition, future review of any new home(s) on the property would be subject to the same permit and design review process as the currently proposed project.

## **Appellant Issue #2, CEQA**

The appellant states that the MND fails to satisfy the requirements of CEQA. The appellant contends that (a) that the analysis of the project is legally inadequate because the MND fails to accurately describe the environmental baseline, and (b) that an EIR is required for this project pursuant to the California Environmental Quality Act because there is substantial evidence supporting a fair argument that the project may impact public access and recreation, and visual resources.

**Appellant Issue 2 (a), Failure to Adequately Describe Environmental Baseline.** The appellant states that the MND mischaracterizes the “proposed off road trail” depicted on the Summerland PRT map along the eastern boundary of the property as a “possible future trail”, obscuring its relevance related to the above PRT policies. The appellant also contends that the MND does not disclose that the public’s use of the creek corridor 15 or 20 years ago may have created a public prescriptive right.

### **Staff Response to Issue #2 (a):**

As discussed above under staff’s response to appeal issue #1, the “proposed off road trail” depicted on the Summerland PRT Map PRT-2 is located along the beach below the subject parcel. The Toro Creek corridor is identified in Summerland Community Plan Figure 15, *Trail, Open Space and Vista Map*, as a “possible future trail”.

Public prescriptive rights may only be adjudicated by the courts. Absent a court order, the County may not recognize prescriptive rights. In addition, the County does not have evidence of continued public use of the Toro Creek corridor in the past 15-20 years, and the record does not support continued use. However, if there is current unauthorized, unofficial use of trails, this project does not interfere with that unauthorized use.

The appellant also states that the MND mischaracterizes the adequacy of nearby beach access routes, and that these routes do not provide safe or adequate access to Loon Point and the down-coast beaches east of Loon Point, particularly under high-tide conditions.

The Staff Report and MND identify the locations of nearby beach access routes to the east and west of the project site. Although the trail from the Loon Point parking lot west of the project site is always open, winter high tides may reduce the beach such that access to Loon Point may not be possible from the west. Walking west from Santa Claus Lane, beach access is continuous and unimpeded during winter high tide conditions.

The appellant states that the MND does not disclose that the project is within a view corridor recognized in the Summerland Community Plan, and does not make any attempt to characterize the existing view through the hedge from Padaro Lane and other public viewing locations. The appellant further states

that the MND does not disclose that the project will be visible from the railroad or provide any photos or visual simulations showing these views.

As described above under appeal issue #1, current public views of the ocean in the vicinity of the project are extremely limited, consisting of heavily filtered blue water views through the mature myoporum hedge at the property line and the eucalyptus trees along the south side of the railroad corridor. This condition is the current setting and was used as the baseline for the environmental and policy analyses. Both the MND and Staff Report state that there are filtered public blue water views from Padaro Lane through the existing hedge. The extremely limited nature of the existing, public blue water views as seen from both Padaro Lane and the railroad tracks to the north is further documented in the Power Point presentation for this Board hearing.

**Appellant Issue 2 (b) EIR Required.** The appellant states that substantial evidence supports a fair argument that the project conflicts with policies adopted for the purpose of avoiding or mitigating environmental effects. The appellant also states that personal observations by area residents also support a fair argument that the project may result in significant impacts to public access and recreation, and visual resources. The appellant concludes that the project requires a focused EIR.

**Staff Response to Issue 2 (b):**

As discussed above, the project does not conflict with any of the visual resource or recreation and trails policies identified by the appellant and listed above. The MND is adequate for the purpose of analyzing the current project. Comments on the record involving recollections by local residents about access in years past do not rise to the level of substantial evidence in this case. For these reasons, an EIR is not required.

**Appellant Issue #3, Legalization of Zoning Violations.** Permit no. 11CDH-00000-00006 would legalize unpermitted grading and selected as-built deviations from a previously approved habitat restoration plan. It would also require removal of specific structures within the creek corridor and riparian setback, protective capping of a significant cultural resource, and mitigation of impacts to the cultural resource in the form of a comprehensive program of archaeological analysis and reporting. The appellant states that such legalization fails to penalize the applicant for violating the County's CLUP and Coastal Act; encourages similar violations by the same applicant or other property owners; fails to mitigate "for temporal impacts associated with the ongoing zoning violation on the property"; deprives the County of revenue; and encourages landowners to build first and then apply for permits if and when they are caught. The appellant also states that in the Coastal Zone the County has a "pattern and practice of condoning unpermitted development", which has "substantial cumulative adverse effects" and promotes "a culture of unpermitted development activity with only a small fraction of such violations ever being prosecuted as such, and for those, with token or no penalties or sanctions". The appellant concludes that "this approach fails to safeguard the County's sensitive coastal resources or uphold with letter and spirit of the California Coastal Act, LCP and Coastal Zoning Ordinance".

**Staff Response to Issue #3:**

As directed by the Board of Supervisors, when the County Planning & Development Department (P&D) receives a zoning violation complaint, P&D identifies methods to abate the violation and, where possible,



identifies a permit path to authorize the unpermitted work. This often results in after-the-fact permitting, including mitigation measures or other appropriate conditions of approval. The process may also result in a requirement to remove unpermitted structures or other objects. In this case, a Coastal Development Permit (CDP) application was submitted by the applicant in response to the Zoning Enforcement Violation (ZEV) for unpermitted grading within an archaeological site. The CDP application fees were doubled to the maximum allowable amount of \$2,000. During case processing, P&D also identified deviations from the previously approved restoration plan, including hardscape located within the riparian setback. As part of application processing, the County required that the applicant fund research to assess impacts to significant cultural resources. Based on this work, mitigation measures were developed and incorporated into project conditions of approval. In addition, the county's biologist and the Coastal Commission worked with the applicant to craft a revised habitat restoration plan that effectively responds to the on-the-ground conditions. These changes included hardscape to aid revegetation and prevent erosion in the loose soils within the riparian setback, and removal of unnecessary structures within the riparian corridor. Measures such as bonding for and initiation of the archaeological study, removal of structures, and capping of the cultural resource are required to be completed prior to the approval of any other permits on the property, including those for the lot split or new residence. These and additional mitigation measures have been applied to the project as if it was new rather than existing development.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

No appeal fees are required for appeals of projects that may be appealed to the Coastal Commission. The estimated staff cost to process the appeal is approximately \$7,466 (40 planner hours). This work is funded in the Planning and Development Permitting Budget Program on page D-168 of the adopted 2013-2015 fiscal year budget.

**Special Instructions:**

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on March 4, 2013. The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the mailed notice are attached. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

**Attachments:**

1. Appeal Packet 13APL-00000-00029, dated December 16, 2013
2. Board of Supervisors Findings of Approval
3. Planning Commission Action Letter for December 4, 2013 hearing, revised January 23, 2014
4. Planning Commission Staff Report dated November 15, 2013, including Environmental Document

**Authored by:** Joyce Gerber, Planning and Development Department, (805) 934-6265