

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

413B



FROM: TLMA - Planning Department

SUBMITTAL DATE:
March 17, 2006

SUBJECT: APPEAL OF THE BOARD OF SUPERVISOR'S RECEIVE AND FILE ACTION OF THE PLANNING COMMISSIONS DENIAL OF AN APPEAL AND APPROVAL OF TENTATIVE PARCEL MAP NO. 32449 – EA39531 – Appellant: Gerhard Befeld - Applicant: R&S Land Development Company, LLC. – Engineer / Representative: Pardue, Cornwell & Associates and Coachella Valley Area Plan - Fourth Supervisorial District – Cathedral City / Palm Springs Zoning District – Western Coachella Valley Area Plan: Rural Community: Very Low Density Residential (RC-VLDR) 1 Acre Minimum – Location: Easterly and westerly of Painted Canyon Road, southerly of Quail Trail, northerly of Encelia Way in the Cahuilla Hills community – 5 Gross Acres - Zoning: One-Family Dwelling - **REQUEST:** Appeal of Tentative Parcel Map No. 32449, a schedule H subdivision of approximately 5 acres into 4 parcels with a minimum parcel size of 1 acre gross.

RECOMMENDED MOTION:

CONSIDERATION of the referenced appeal of the Planning Commission decision received on March 14, 2006.

THE PLANNING COMMISSION took the following actions on January 25, 2006:

DENIED the **APPEAL OF TENTATIVE PARCEL MAP NO. 32449**, as approved by the Planning Director's representative at the Director's Hearing on June 13, 2005; and,

ADOPTED a **MITIGATED NEGATIVE DECLARATION** for **ENVIRONMENTAL ASSESSMENT NO. 39531** with **ADDENDUM**, based on the findings incorporated in the initial study and the conclusion that the project will not have a significant effect on the environment; and,

Robert C. Johnson
Planning Director

RCJ:aa

(Continued On Attached Page)

Departmental Concurrence

REVIEWED BY EXECUTIVE OFFICE
[Signature]
DATE 4/12/06

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. | District: Fourth | Agenda Number:

16.1

The Honorable Board of Supervisors

RE: APPEAL OF THE BOARD OF SUPERVISOR'S RECEIVE AND FILE ACTION OF THE
PLANNING COMMISSIONS DENIAL OF AN APPEAL AND APPROVAL OF TENTATIVE
PARCEL MAP NO. 32449

March 17, 2006

Page 2 of 2

APPROVED TENTATIVE PARCEL MAP NO. 32249, AMENDED MAP NO. 1, subject to the attached condition of approval, and based upon the conclusions and findings incorporated in the staff report.

COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

Planning Department
Robert C. Johnson Planning Director

RIVERSIDE COUNTY
CLERK OF THE BOARD
OF SUPERVISORS

APPLICATION FOR APPEAL

PAID

DATE: 3-15-06
AMOUNT: \$964-
REC'D BY: Copri Decker

DATE SUBMITTED: March 14, 2006

Appeal of application case No(s): TPM 32449-EA 395301

List any concurrent application case numbers: Hrg. Set 4.18.06 @ 1:30pm

Applicant's Name: Gerhard Befeld E-Mail: _____

Mailing Address: 73450 Country Club Dr.

Palm Desert Street CA 92260
City State ZIP

Daytime Phone No: (760) 346-5866 Fax No: (760) 568-9409

HEARING BODY WHOSE ACTION IS BEING APPEALED	HEARING BODY TO WHICH APPEAL IS BEING MADE	APPEAL TO BE FILED WITH
Planning Director	<ul style="list-style-type: none"> • Board of Supervisors for: Temporary Outdoor Events and Substantial Conformance Determination for WECS. • Planning Commission for: all other decisions. 	<ul style="list-style-type: none"> • Clerk of The Board for: Appeals before the Board of Supervisors. • Planning Department for: Appeals before the Planning Commission.
Planning Commission	Board of Supervisors	Clerk of the Board of Supervisors
TYPE OF CASES BEING APPEALED		FILING DEADLINE
<ul style="list-style-type: none"> • Change of Zone Denial by the Planning Commission • Commercial WECS Permit • Conditional Use Permit • Hazardous Waste Facility Siting Permit • Public Use Permit • Variance • Specific Plan denied by the Planning Commission • Substantial Conformance Determination for WECS • Surface Mining and Reclamation Permit 		Within 10 days after the notice of decision appears on the Board of Supervisors Agenda.
<ul style="list-style-type: none"> • Land Division (Tract Map or Parcel Map) • Revised Tentative Map • Minor Change to Tentative Map • Extension of Time for Land Division (not vesting map) 		Within 10 days after the notice of decision appears on the Board of Supervisor's Agenda.
<ul style="list-style-type: none"> • Extension of Time Vesting for Tentative Map 		Within 15 days after the notice of decision appears on the Board of Supervisor's agenda.
<ul style="list-style-type: none"> • General Plan or Specific Plan Consistency Determination • Temporary Outdoor Event 		Within 10 days after date of mailing or hand delivery of decision of the Planning Director.
<ul style="list-style-type: none"> • Environmental Impact Report 		Within 10 days of receipt of project sponsor or Planning

(1.8 3.14.06)

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

818B



FROM: TLMA - Planning Department

SUBMITTAL DATE:
February 14, 2006

SUBJECT: APPEAL OF TENTATIVE PARCEL MAP NO. 32449 – EA39531 – Applicant: R&S Land Development Company, LLC – Engineer / Representative: Pardue, Cornwell, & Western Coachella Valley Area Plan - Fourth Supervisorial District – Cathedral City / Palm Springs Zoning District – Western Coachella Valley Area Plan: Rural Community: Very Low Density Residential (RC-VLDR) 1 Acre Minimum – Location: Easterly and westerly of Painted Canyon Road, southerly of Quail Trail, northerly of Encelia Way in the Cahuilla Hills community – 5 gross acres - Zoning: One-Family Dwelling - **REQUEST:** Schedule H subdivision of approximately 5 acres into 4 parcels with a minimum parcel size of 1 acre gross.

BACKGROUND: Tentative Parcel Map No. 32449 was approved at the Planning Director's Hearing on June 13, 2005 and this decision was appealed to the Planning Commission by an opposing third party. The appeal hearing took place on January 25, 2006. After review and discussion, the Planning Commission denied the appeal and upheld the Planning Director's decision to approve the tentative parcel map, with added conditions, including limiting pad sizes to 10,000 square feet maximum and limit access driveways to 3,000 square feet, unless greater pad and access areas are allowed by separate plot plan.

RECOMMENDED MOTION:

RECEIVE AND FILE the above referenced case acted on by the Planning Commission in La Quinta on January 25, 2006.

The Planning Department recommended Denial of the Appeal and Approval of Tentative Parcel Map No. 32449; and,

THE PLANNING COMMISSION BY A 4-0 VOTE (Commissioner Snell absent):

David Marcus For

Robert C. Johnson
Planning Director

RCJ:aa

REVIEWED BY EXECUTIVE OFFICE
[Signature]
DATE 2/16/06

Departmental Concurrence

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above report of approval is received and filed as recommended.

Ayes: Buster, Tavaglione, Stone, Wilson and Ashley
 Nays: None
 Absent: None
 Date: March 14, 2006
 xc: Planning, Applicant

Nancy Romero
 Clerk of the Board
 By: *[Signature]*
 Deputy

Prev. Agn. Ref.

District: Fourth

Agenda Number:

**ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD**

1 . C

The Honorable Board of Supervisors
RE: APPEAL OF TENTATIVE PARCEL MAP NO. 32449
February 14, 2006
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DENIED the **APPEAL OF TENTATIVE PARCEL MAP NO. 32449**, challenging the approval by the Planning Director's representative at the Director's Hearing on June 13, 2005; and,

ADOPTED a **MITIGATED NEGATIVE DECLARATION** for **ENVIRONMENTAL ASSESSMENT NO. 39531** with **ADDENDUM**, based on the findings incorporated in the initial study, and the conclusion that the project will not have a significant effect on the environment; and,

APPROVED **TENTATIVE PARCEL MAP NO. 32449, AMENDED NO. 1**, subject to the attached conditions of approval, and based upon the findings and conclusions of the staff report.



March 14, 2006

County Planning Commissioners and Mr. Paul Clark, AICP
c/o Riverside County Planning Department
82-675 Highway 111, Room 209
Indio, CA 92201

**RE: TPM 32449 - January 25, 2006 Planning Commission Appeal Hearing on
Planning Director's Approval Determination for Tentative Parcel Map and
Adoption of Environmental Assessment No. 39531**

Dear Planning Commissioners and Mr. Clark:

I represent Mr. and Mrs. Gerhard Befeld who are owners of Assessor's Parcel No. 628-360-007. For the reasons elaborated by Attorney Jim Ferguson on their behalf and by our testimony at previous Planning Commission hearings, Mr. and Mrs. Gerhard Befeld feel that they and their neighborhood will be adversely impacted by the above referenced parcel map and its approval.

We have considered the limited information that has emerged since the September 2005 Planning Commission hearing, and have reviewed the latest Draft EA, staff report and Conditions of Approval. We continue to have significant concerns for the appropriateness of this subdivision and the basis for adopting a Mitigated Negative Declaration. Therefore, for the reasons set forth below we respectfully request that the County Planning Commission deny the subject parcel map and make a finding of potential unmitigated significant environmental effect that could result from its approval.

Tentative Parcel Map No. 32449

The Amendment No. 1 parcel map continues to divide the subject property into four residential lots, which in light of the loss of lands to Painted Canyon Road, Quail Trail and a 150± foot wide wash, proposes densities that are too high. The subject property is significantly impacted by the aforementioned roads and drainage, but the proposed parcel map fails to recognize these constraints. The Planning staff's recommendation to reduce pad sizes does little to address this basic inadequacy, which may still result in manufactured slopes of 8 to 16 feet in height.

Essential data have still not been provided on the latest map provided by the County map, including a lack of cut and fill calculations. How much import or export will be required? How much of each parcel would end up undisturbed? Neither is there an adequate delineation of surrounding topography, disposition of existing dirt roads, or adequate delineations of existing and future improvements.

Environmental Assessment No. 39531 and Addendum

The original Environmental Assessment and subsequent Addendum prepared for this subdivision map continue to rely upon inaccurate and/or insufficient data and information about existing conditions at the site and the potential adverse impacts associated with the proposed subdivision. The effect of intensifying land use in the vicinity has also not been assessed. Each of our major issues of concern is discussed below.

De Minimis Finding is Inappropriate: It is now uncertain whether the adoption of a "De Minimus" finding is still being recommended by staff. Findings in the staff report refer neither to the adequacy of proposed mitigation measures or to a determination of "de minimus" impact to biological resources. It is true that the development of the Cahuilla Hills neighborhood has resulted to some degree in degraded habitat; however, this degradation is overstated in the biology report and follow-up letter. Such habitat areas as Cat Canyon, Bruce Creek and other riparian areas in the vicinity continue to support viable habitat occurring on site. It is of concern that the biology report and supporting letters present a prejudicial characterization of the area. The habitat on the subject property clearly has the potential to harbor important biological resources.

Land Use Compatibility: The staff report does not clarify the position of the City of Palm Desert taken in its recently adopted General Plan update. The subject area is designated for open space (floodways), regulated and very low density on hillsides, and variable low densities (0-4 du/ac) on other lands in the Cahuilla Hills neighborhood. The City's General Plan land use designation on the subject property does not guarantee any yield of density, but rather requires a careful assessment of the "carrying capacity" of each parcel proposed for subdivision or development.

The amended staff report now recognizes the adverse effects of the proposed subdivision but does not do enough to address the obvious effort to shoehorn a four-parcel subdivision on a lot suited for one or at the most two lots. Planning staff recognizes the adverse effects of the proposed grading plan but cannot determine whether the changes in pad size (see Conditions of Approval) will adequately reduce cut and fill slopes and where these slopes will daylight with regard to surrounding parcels. This constitutes proposed mitigation without knowledge of its adequacy or effectiveness at mitigating the impacts. The efficacy of the proposed mitigation measures should be demonstrated now, not at a staff review level where parties of interest are less likely to be heard.

Accessibility: Access to the proposed lots is provided by the existing and partially improved Painted Canyon Road. Within the subject property, this local roadway occurs within and is part of the defined floodway of a tributary to the Cat Canyon Wash. This roadway is the only route of access to the proposed lots.

Aesthetics: The parcel map EA Addendum has been amended to identify "aesthetics" as an area of environmental concern. As noted above, the EA Addendum explicitly describes the significant impacts associated with the proposed parcel map and pad sizes and elevations.

The proposed pad grades have the potential to significantly impact adjoining lands. These elevated pads will unnecessarily obstruct views from adjoining lands and will create aesthetically offensive impacts. The substantial cuts proposed along the eastern property line will have a significant adverse impact on views for travelers on Painted Canyon Road, where the impression may be one of a quarry rather than a thoughtfully planned subdivision. There is no demonstration or analysis to show that the staff's conditions to limit pad area to 10,000 square feet will effectively mitigate these now admitted impacts.

It is further troubling that staff is recommending that a request may be submitted later to the Planning Department for Director approval of pads larger than the 10,000 square foot maximum set forth in the Conditions of Approval. Will a new EA be prepared for such a request and will surrounding property owners get a chance to comment on such a proposal?

Biological Resources: We continue to have significant reservations about the veracity of the biological resources analysis prepared for this parcel map. There are numerous inaccuracies, and habitat on the site and in the area is characterized in a prejudicial manner, which calls into question the objectivity of the report and associated materials. On-site resources include a braided stream that passes diagonally through the subject property and has a significant tributary area. As can be seen from the attached photos, desert dry wash woodland (DDWW) is found along this drainage, impacts to which in other locales have been required to be mitigated by state and federal resource agencies.

We previously identified the area as potentially harboring the federally listed desert tortoise. The project biologist has responded by stating that there are no records of tortoise occurrences within one mile of this site. This is incorrect. The biological surveys prepared for the Stone Eagle golf course (AMEC 2002) located tortoise sign less than one-half mile north of the subject property; mitigation for the loss of tortoise habitat was required on this project.

The subject property is also located near several seeps, springs that emerge from bedrock and support a wide range of wildlife, including birds nesting in the vicinity. A seep is located within Bruce Creek, less than 1,500 feet from the subject property. The applicant's biologist points to the lack of knowledge and consideration as a sign of no significant biological resources; we question whether this is an appropriate argument.

The applicant's biologist also makes a heretofore unheard of claim, that the Coachella Valley is not located within the Sonoran Desert but rather the Mojave. The biologist references the lack of "legumous trees" as an example of why the subject wash is not Sonoran habitat (Lower Colorado River subdivision or otherwise) but lists desert ironwood (member of legume family) as occurring on site. A review of the site shows the occurrence of elements of riparian habitat typical of the Sonoran desert.

The development of the subject parcel map will result in direct impacts to the on-site streambed and will involve the placement of fill within the streambed. A new, independent biological resources assessment should be conducted prior to approval of this map. As previously noted, comparable lands approved for development within one-half mile of this site were classified as Desert Dry Wash Woodland (DDWW) and required the processing of both a California Fish and Game Code Section 1602 Streambed Alteration Agreement and a federal Clean Water Act Section 404 permit. The County should submit the subject map and associated information to both the California Department of Fish and Game (CDFG) and the US Army Corps of Engineers (ACOE) regarding the need for permits or approvals.

Hydrology: As noted above, access to the subject property is via Painted Canyon Road, which is located within the floodplain of a drainage tributary to Cat Canyon Wash. County Flood Control has determined that:

"The wash has a braided character. The property from the west side of Painted Canyon Road to the fairly obvious eastern stream bank is subject to flood hazard from debris laden flows."

What has not apparently been determined is what are the 100-year flood elevations within this wash and over the subject portion of Painted Canyon Road. This information would allow the proposed pads to be kept to the lowest elevation necessary. This subdivision also challenges the wisdom of maximizing the number of lots on a highly constrained parcel, and one to which emergency access cannot be assured. There is clearly no "all-weather" access to the proposed lots from the subject drainage.

It continues to be uncertain whether and to what extent the proposed subdivision may divert on-site and off-site flows onto Painted Canyon Road without any provision to mitigate this potentially significant impact. Will there be on-site stormwater retention or detention, as has been required for other development tributary to the Palm Valley Channel? The proposed map also channelizes these flows and could result in damage to the roadway, as well as downstream improvements and properties. How these impacts could be mitigated is not discussed in the EA or Conditions of Approval.

Summary

The proposed subdivision is located within an area of Palm Desert that has heretofore seen predominately very low-density rural development, which has respected the natural land forms and habitat of Cahuilla Hills. A few unfortunate examples of thoughtless and insensitive development have occurred; however, these limited intrusions should not be viewed as a rationale for spoiling the rest of Cahuilla Hills by allowing intense and insensitive development that ruins the very character that originally drew people to these hills.

Our client does not object to the parcel map in principal; however, consideration for sensitive environmental design, respect for the character of the neighborhood, and effective and demonstrable mitigation are essential for development of these lands to be compatible with surrounding lands and the Cahuilla Hills neighborhood.

Thank you for your continued thoughtful consideration of this appeal. We respectfully request the Planning Commission deny the proposed parcel map and determine that the project could result in significant adverse impacts to the environment.

Sincerely,



John D. Criste, AICP

cc

Gerhard Befeld

James Ferguson, Esq.

Robert Bernheimer, Esq.