

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

929 B



FROM: TLMA - Planning Department

SUBMITTAL DATE:  
January 2, 2007

**SUBJECT:** APPEAL OF TENTATIVE TRACT MAP NO. 34305 – EA40741 – Appellant: Marie and Gerhard Befeld - Applicant: Peter Scheer – Engineer/Representative: RBF Consulting, Inc – Fourth Supervisorial District – Cathedral City-Palm Desert Zoning District – Western Coachella Valley Area Plan: Rural Community: Very Low Density Residential (RC:VLDR)(1 Acre Minimum) – Location: Northerly of Quail Trail, southerly of Homestead Road, and westerly of Highway 74 – 20 Gross Acres – Zoning: One-Family Dwellings, 1 Acre Minimum (R-1-1) – **REQUEST:** A planned residential development to divide approximately 20 acres into 10 residential lots, with an additional 3 lots for open space areas and an additional lot for community recreation.

**BACKGROUND:**

Tentative Tract Map No. 34305 was scheduled at the Board of Supervisors to be Received and Filed on December 12, 2006 (Item No. 1.3). However, the tentative tract map was appealed in a timely manner by an interested third party (Marie and Gerhard Befeld) and an appeal hearing has been scheduled for January 9, 2007, as required by ordinance.

The project was first presented to the Planning Commission on November 1, 2006. The Planning Commission continued the project to the December 6, 2006 hearing with recommendation to the applicant and staff to address issues of concern by the U S Fish and Wildlife Services relating to the impact the project may have on the endangered Peninsular Bighorn Sheep.

Issues of concern to the Endangered Peninsular Bighorn Sheep were addresses in the Environmental Assessment and new condition of approval added to mitigate any impact

Ron Goldman  
Interim Planning Director

RCJ:mb

Departmental Concurrence

REVIEWED BY EXECUTIVE OFFICE

DATE 1/3/07 YMG

Policy

Consent

Dep't Recomm.:  
Per Exec. Ofc.:

5001 70M - P VM 1: P8

RECEIVED RIVERSIDE COUNTY

Prev. Agn. Ref.

District: Fourth

Agenda Number:

16.3

the project may have on the species. The project was re-advertised and the Planning Commission approved the project at the December 6, 2006 public hearing.

The City of Palm Desert submitted a request for continuance for one month. Staff also received 16 e-mails from residents of the City of Palm Desert asking for a continuance. The Planning Commission considered but felt no new information was submitted that would change the facts.

**RECOMMENDED MOTION:**

The Planning Department recommended Approval; and,  
**THE PLANNING COMMISSION BY 5-0 VOTE RECOMMENDS:**

**DENIAL** of the **APPEAL OF TENTATIVE TRACT MAP NO. 34305**; and,

**ADOPTION** of a **MITIGATED NEGATIVE DECLARATION for ENVIRONMENTAL ASSESSMENT NO. 40741**, 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,

**APPROVAL** of **TENTATIVE TRACT MAP NO. 34305**, subject to the attached conditions of approval and based upon the findings and conclusions incorporated in the staff report.

RIVERSIDE COUNTY  
CLERK OF THE BOARD  
OF SUPERVISORS

# COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

## Planning Department

Robert C. Johnson Planning Director



DATE: 12-21-06  
AMOUNT: 592.62  
REC'D BY: CP#12565

Submitted check to planning →

## APPLICATION FOR APPEAL

DATE SUBMITTED: 12-21-06

Appeal of application case No(s): TTM 34305 & EA 40741

List any concurrent application case numbers: \_\_\_\_\_

Applicant's Name: Marie and Gerhard Befeld E-Mail: \_\_\_\_\_

Mailing Address: 73450 Country Club Drive

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

Riverside Office · 4080 Lemon Street, 9th Floor  
P.O. Box 1409, Riverside, California 92502-1409  
(951) 955-3200 · Fax (951) 955-3157  
Form 295-1013 (03/09/05)

Indio Office · 82-675 Hwy 111, 2nd Floor  
Room 209, Indio, California 92201  
(760) 863-8277 · Fax (760) 863-7555

Murrieta Office · 39493 Los Alamos Road.  
Murrieta, California 92563  
Fax (951) 955-3157

1.3 of 12/12/06





December 20, 2006

Clerk of the Board  
Riverside County Board of Supervisors  
4080 Lemon Street  
Riverside, CA 92502

**RE: Appeal of Planning Commission Approval of TTM 34305 & EA 40741 -Peter Sheer  
Subdivision Proposal in Cahuilla Hills Area of Palm Desert - Environmental Concerns**

Dear Supervisor Wilson and Board of Supervisors:

I represent Mr. and Mrs. Gerhard Befeld who are owners of properties in Cahuilla Hills, including Assessor's Parcel No. 628-360-007. The Befelds are concerned about the intensity of the proposed subdivision and the potentially significant adverse effects it could have on the Cahuilla Hills neighborhood and the environment. This concern was expressed at the Planning Commission held on the matter.

The proposed project encompasses approximately 20-acres and would result in grading for and the construction of ten (10) single family homes on lands that are significantly constrained by steep slopes, very rocky conditions, sensitive habitat, accessibility, and high visibility to other homes located to the south in Cahuilla Hills, including that of the Befelds. The appropriateness of this proposed subdivision is further brought into question by the significant amount of fill, 22,390 cubic yards that must be imported to the site to make it viable. A project design manual has been submitted but reinforces many of the Befelds' concerns. Each of the Befeld's concerns is further described below.

**Aesthetic Impacts**

The proposed subdivision will significantly alter currently vacant and largely undisturbed rocky slopes and hillsides of the Santa Rosa Mountains, and will result in a significant impact to important physical features, including rocky outcroppings and native vegetation. Although the extent of grading for homes has been reduced in response to concerns already raised, these activities will result in a patchwork of disturbance and structures that will generally be lower in elevation and more highly visible than those to the south in Cahuilla Hills. This development will significantly and potentially adversely alter the character of this area, which has traditionally developed at lower densities. While the staff report references required compliance with "Countywide Design Standards and Guidelines", the conclusion that these requirements will mitigate potentially significant aesthetic impacts has not been demonstrated.

Associated with these above-mentioned impacts are those associated with lighting and glare that is inevitably associated with residential development. Residents in Cahuilla Hills to whom the project will be most visible, currently view only natural rocky hillsides and the Stone Eagle golf course, neither of which create issues of light and glare. The inevitable installation of landscape and security lighting will significantly affect the very rural character of Cahuilla Hills and especially this area. Yet the project CEQA Initial Study finds that the impacts would be less than significant. In the absence of mitigation measures, this conclusion is unfounded.

### **Biological Resources**

The entire project site is tributary to the important and highly sensitive Bruce Creek, which is already somewhat impacted by the illegal disturbance of the streambed and associated riparian habitat, by runoff associated with development in Cahuilla Hills, and to a lesser extent by subsurface breakouts from the Stone Eagle golf course. While direct dredge and fill of the Bruce Creek streambed is shown on the grading plans as being avoided, it is difficult to see how this can be achieved. Furthermore, urban runoff in the form of siltation, household and landscape chemicals, and other potential contaminants may find their way into the stream, which currently supports a wide range of birds, amphibian and reptile species, including at least three species of frog.

The CEQA Initial Study states that no special interest plant communities were found to be present; however, page 11 of the biology report states that six plant species "were identified as present and are subject to the California Desert Native Plants Act (Section 80001, et seq. of the California Department of Food and Agriculture Code)." The report goes on to state, "Destruction or removal of any of the above-listed species on the proposed project site may require a permit from, or notification to, the County of Riverside Agricultural Commissioner or Sheriff."

The subject property is designated as "Critical Habitat" for the Peninsular bighorn sheep, which is designated as "endangered" by state and federal wildlife agencies. The species is also "fully protected" under the California Fish and Game Code. Lands in the immediate vicinity were also found to have harbored desert tortoise, although no protocol-based tortoise survey was conducted on the subject property.

It should be noted that Figure 3 in the project biology report shows an entirely different property located some distance to the south and outside the tributary area flowing into Bruce Creek. It appears that the report attempts to essentially assess conditions at two totally different sites without adequately distinguishing between the two. Two separate reports should be prepared inasmuch as the property shown on Figure 3 is not the subject of TTM 34305.

The literature search cited in the project biology report also fails to reference the extensive biological resource surveys and analyses performed for the Stone Eagle golf course and residential development, which included analyses for a Section 1602 Streambed Alteration Agreement and a Section 404 dredge and fill permit from the US Army Corps of Engineers. The project biologists should be directed to review these analyses, which were conducted on adjoining lands, and to confer with state and federal wildlife agencies. The project biology report should be updated and revised accordingly.

In summary, the conclusions set forth in the CEQA Initial Study are not supported by the facts. The Initial Study should be rewritten, based upon a more thorough biological resources analysis, and re-circulated for comment before the Planning Commission or Board of Supervisors considers the tract map for approval.

### **Cultural Resources**

The cultural resources survey prepared for this project, and its conclusions, are in direct contradiction to resource surveys conducted on adjoining lands of the Stone Eagle project. While the cultural resources report cites the identification of forty-six cultural resource sites within one mile of the site, it goes on to state that, "none has been documented within or adjacent to the proposed project boundary. In fact, the following sites have been identified and documented immediately east of the subject property within the

Stone Eagle project site<sup>1</sup>: CA-RIV-4233, CA-RIV-4239, CA-RIV-4240, CA-RIV-4242, CA-RIV-4243, CA-RIV-4244, CA-RIV-4245, and others have been found a short distance further east. The above cited resource sites included rock shelters, bedrock milling features, rock cairns and trails, and ceramic concentrations and scatters. While the report cites such resources "within one mile of the project", to fail to mention the proximity of the resources found at the Stone Eagle site borders on misrepresentation and brings into question the veracity of the entire cultural resources survey and report.

The credibility of the cultural resources survey and report is further brought into question by the report's failure to mention that there is water year-round in Bruce Creek, which passes through the subject property. The subject property also harbors significant stands of honey mesquite, which were clearly taken advantage of by Native Americans as evidenced by the numerous milling sites in the area, and yet there is no mention of these important and adjacent resources in the cultural resources report.

The report concluded that there were no cultural resources on this property, significant or otherwise. And yet, there is no indication from the report as to how the site was surveyed, what survey protocol were used or what the relationship on on-site water and ethno-botanically significant resources might have had on the site's use by Native Americans.

As with the biology report prepared by the same consulting firm, it should be noted that report show an entirely different property located some distance to the south. It appears that the cultural resources report attempts to essentially assess conditions at two totally different sites without adequately distinguishing between the two. Two separate reports should be prepared inasmuch as the property shown on the report Figure 1 is not the subject of TTM 34305.

The cultural resources report prepared for this project is grossly inaccurate and misrepresents the site's potential to harbor sensitive cultural resources. The report should be considered inadequate and should not be relied upon to draw the conclusion of no significant impact, as cited in the CEQA Initial Study.

### **Slopes, Soils and Erosion**

The CEQA Initial Study states that the majority of subject property has slopes of over 25%, with intermittent slopes ranging from 16 to 20%. These conditions clearly call for either no development or at least development at densities that are substantially lower than those proposed.

Even with the reduced pads proposed, the CEQA Initial Study finds that the proposed project results in a significant imbalance between cut and fill (6,760 cy of cut vs. 22,390 cy of fill), and states that mitigation is required, stating that the project must, "Reduce grading to provide for close to balance earth work volumes." This "mitigation" does not appear feasible without significant mass grading (or even blasting) of the site, which flies in the face of other measures to be take to limit site disturbance. The grading plan and CEQA Initial Study are at odds with and contradict one another. Mitigation measures must be specific and actually mitigate impacts, not create questionable future and probably infeasible actions that result in worse, not reduced, impacts.

The subject property includes portions of Bruce Creek, which is established as a stream under the jurisdiction of the California Department of Fish and Game (Section 1600 of CA Fish and Game Code) and the US Army Corps of Engineers (Section 404 of Clean Water Act). Both the state and federal

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<sup>1</sup> "Historical and Archaeological Resources Survey Report for the Crest Project" (aka Stone Eagle), prepared by CRM Tech. April 22, 2002.

governments require delineation of streambeds that may be impacted by development. While the grading plan argues that site disturbance will be limited, it is unclear and undemonstrated how the 6,760 cubic yards of cut and the 22,390 cubic yards of fill will be managed in such a fashion as to preclude impacts to Bruce Creek. Until the County received additional information regarding grading, placement of imported fill and controls to preclude erosion, either in the near or long-term) no action should be taken on this proposed subdivision.

### **Land Use/Planning**

Based upon statements in the CEQA Initial Study regarding land use/planning, the County does not yet have enough information to determine whether and to what extent the project may have a significant adverse impact on surrounding lands or how it can conform to County planning standards. The Initial Study states, "The County would like to explore methods of reducing the grading footprint. The applicant is encouraged to explore alternate grading techniques, such as split level pads, and post and beam style construction, and also to limit side casting of graded materials."

The information provided by the applicant's engineer does not adequately resolve these issues and the County should defer its consideration of this proposed subdivision until such time as a complete picture of impacts and feasible mitigation have been presented.

Neither are the related findings set forth in the staff report supported by the record as a whole. Although a "conditionally permitted use", single-family development of the intensity proposed for this site is not supported by the physical conditions found there or the record. Such land use intensity is inconsistent with the RCIP and should be significantly reduced to be more closely consistent with the one dwelling unit per five acres (1 du/5 ac), as recently recognized by the Board of Supervisors. The County is not and should not feel that it is constrained by the "exemption" cited in Finding No. 4 of the staff report.

### **Sewer**

As is clear from the on-site conditions as described in the project geotechnical report and the CEQA Initial Study, the on-site conditions do not support the use of on-site wastewater treatment systems (septic tanks and/or cesspools). The Initial Study does not adequately address this issue, simply stating that, "The proposed project will be affected by the sewer services programs and land use standards of the RCIP." This does not constitute mitigation; this is especially the case when known on-site conditions are considered. No viable alternative, i.e. connection to a community sewer system, has been proposed or its feasibility demonstrated.

This is an especially important issue that should also have been addressed in the Biological Resources section of the CEQA Initial Study. Bruce Creek is already adversely impacted by on-lot septic tanks within Cahuilla Hills, which are discharging effluent into this stream and that are demonstrably higher in at least nitrates. Every effort should be made by the County to get existing homes in this area onto community sewer systems and not encourage the development of more polluting septic tanks in the Bruce Creek area.

### **Utilities**

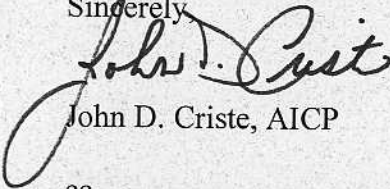
The CEQA Initial Study provides neither a description of how or from where such services as natural gas, electricity, telephone, street lighting, stormwater management or other utility services will be brought to this site. None of these currently exist at the site. Undergrounding of such facilities will be a significant challenge and the possible reliance on overhead lines and poles is not mentioned. There is no discussion of how the site will be serviced and reference to conformance to requirements of utility companies does not address the legitimate environmental concerns of the community.

**Summary**

The proposed subdivision is located within an area of Cahuilla Hills that has heretofore seen predominately very low-density rural development on large lots, the appropriateness of which has recently been recognized by the Board of Supervisors. As proposed, the subdivision does not respect the natural landforms and habitat of Cahuilla Hills, nor the significant environmental constraints at the site. 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.

The subject subdivision has not been adequately analysed in accordance with CEQA and the County rules to implement same. It is recommended that additional environmental analysis be conducted, that a new and expanded Initial Study be prepared and circulated, and that the proposed project be required to conform to sound land and environmental planning.

Sincerely,



John D. Criste, AICP

cc

Gerhard Befeld  
James Ferguson, Esq.  
Robert Bernheimer, Esq.