



July 9, 2018

Historic Resources Review Board
c/o Mike Novo
Monterey County Resource Management Agency
Land Use Division, Planning
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Subject: Paraiso Springs Resort (Paraiso Springs Resort LLC) hearing before the Historic Resource Review Board (HRRB) of Monterey County

Dear Members of the Historic Resources Review Board,

LandWatch urges that Monterey County mitigate the unauthorized demolition of nine historic cottages removed from the Paraiso Hot Springs Resort in violation of Monterey County Code by:

1. Requiring the developer to downsize the project so that it is no larger than the historic use and avoids any development on the steep hillsides.
2. Assessing a sufficient penalty to send a clear message to this and future developers about how the County regards its historic resources and how it responds to illegal activities.

The proposed mitigation package is insufficient because it supports the complete razing of the historic Paraiso Hot Springs Resort and rewards the developer with a project that is grossly out of scale and character in comparison to what historically existed.

CEQA mitigation is not limited to replacement or interpretation of the lost resource.

CEQA mitigation need not be confined to replacement or "interpretation" of the lost historic resource. Mitigation may compensate for the loss through provision of substitute resources. CEQA Guidelines, section 15370(e) (mitigation may include "Compensating for the impact by replacing or providing substitute resources or environments.") The State of California's Office of Historic Preservation obviously agrees that substitute mitigation is feasible and proper, stating that "[a]nother useful mitigation measure would be the creation of a mitigation fund to support a variety of preservation activities throughout the unincorporated areas of the county." Carol Roland-Nawi, Ph.D., State Historic Preservation Officer, Office of Historic Preservation, letter to John Ford, Oct. 3, 2013 (see HRB Staff Report Ex. A-E, pdf page 60. The letter suggests that a mitigation fund be set at the "cost of reconstructing the cottages in today's

market." *Id.* Thus, any suggestion that mitigation must be confined to interpretation or reporting on the particular historic resource that was lost is erroneous as a matter of both law and fact.

Code enforcement obligations are a separate and independent requirement from CEQA mitigation, and the County may not approve any permits for the project without including a remedy for the violation, which can include restoration or other relief.

The County has authority and responsibility to impose penalties and restoration requirements for code violations that is independent of its authority and responsibility to impose proper CEQA mitigation. In addition to imposing double fees under section 21.84.140, the County may not approve any further permits unless that permit includes a remedy for the violation:

21.84.120 - Refusal to issue permits, licenses or other entitlements. No department, commission, or public employee of the County of Monterey which is vested with the duty or authority to issue or approve permits, licenses or other entitlements shall issue or approve such permits, licenses or other entitlements nor determine a discretionary permit complete where there is an outstanding violation of this Title involving the property upon which there is pending application for such permit, license or other entitlement unless such permit, license, or other entitlement is the, or part of the, administrative remedy for the violation. [Emphasis added]

Nothing in the County code provisions for code enforcement limits the "action necessary to abate the violation." See MCC section 21.84.100 (notice of violation is required to state necessary abatement action.) Nothing bars a restoration requirement or its equivalent. For example, the County Code requires restoration of property to "its pre-violation state" where grading, vegetation removal, or tree removal was done in violation of County ordinances. MCC section 21.84.130. This requirement can only be waived in emergency, which does not obtain here. MCC section 21.84.120. Here, earth was moved in violation of MCC section 18.25.190, which required a permit before demolition of historic structures.

The proposed retroactive demolition permit requires a showing of substantial financial hardship, but the record does not support any such finding.

Where the applicant seeks a demolition of a historic resource, it must either show that the project will not adversely affect historic resources, that demolition was necessary to abate unsafe conditions or that "[d]enial of the application will result in immediate and substantial financial hardship as established pursuant to Section 18.25.175." MCC section 18.25.170(D)(5) Clearly the demolition did adversely affected historic resources and was not done to abate an unsafe condition. Thus, the applicant must now demonstrate substantial financial hardship.

Hardship Showing Required: The showing of substantial financial hardship requires the applicant to disclose specific financial data to the HRRB. The applicant has not complied. Accordingly, the HRRB cannot take any action on the matter yet because it has no basis to make the required finding of substantial financial hardship.

The HRRB should require the applicant to demonstrate financial hardship by showing that it would have been a substantial financial hardship not to demolish the cottages and/or that restoration of the cottages would be a substantial financial hardship.

Information Required: The HRRB has authority to demand cost estimates, valuation assessments, operating income disclosures, mortgage balances, income tax brackets of the

owners, etc. The applicant must demonstrate that without demolition it would be denied any reasonable use or return. Note that "personal, family, or financial difficulties, loss of prospective profits, and neighboring violations are not justifiable hardships." MCC section 18.25.175(C). (Emphasis added)

Plan Required: In showing financial hardship, the applicant must present the HRRB with a plan to relieve the economic hardship. MCC section 18.25.175(D). "This plan may include, but is not limited to, property tax relief, loans or grants from the County or other private sources, acquisition by fee purchase or eminent domain, use of the State Historic Building Code, redevelopment funds, development fees for historic preservation, changes in applicable zoning regulations, transfer of unused development rights, or relaxation of the provisions of this Chapter sufficient to allow reasonable beneficial use or return from the property." MCC section 18.25.175(D). As discussed below, LandWatch recommends that the HRRB propose a plan that would combine CEQA mitigation and indirectly impose a financial penalty by limiting the size of the project.

County code on this matter is exceedingly clear:

18.25.175 - Substantial financial hardship.

A. In the event an applicant presents facts and clear evidence demonstrating to the Review Board that failure to approve the application for a permit will cause an immediate and substantial financial hardship because of conditions peculiar to the particular structure or other feature involved, and the damage to the owner of the property is unreasonable in comparison to the benefit conferred to the community, the Review Board may approve or conditionally approve such permit even though it does not meet the standards set forth in this Chapter. The burden of establishing substantial financial hardship shall be on the applicant. (Emphasis added)

B. The Review Board shall be authorized to request the applicant to furnish material evidence supporting the applicant's request for a permit on the basis of immediate and substantial financial hardship. Such evidence may include, but need not be limited to, the following:

1. Cost estimate of the proposed construction, alteration, demolition, or removal, and an estimate of the additional costs that would be incurred to comply with the recommendations of the Review Board for issuance of a permit.
2. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for any rehabilitation.
3. Estimated market value of the property in its current condition; estimated market value after completion of the proposed construction, alteration, demolition, or removal; after any change recommended by the Review Board; and, in the case of a proposed demolition, after renovation of the existing property for continued use.
4. In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property and its market value for continued use after rehabilitation.
5. For income producing properties, information on annual gross income, operating and maintenance expenses, depreciation deductions, and annual cash

flow after debt service, current property value appraisals, assessed property valuations, real estate taxes, and any other information considered necessary by the Review Board to determine whether substantial evidence of economic hardship exists.

6. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years.
7. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
8. Amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property is purchased, and any terms of financing between the seller and buyer; any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years.
9. Assessed value of the property according to the two most recent assessments.
10. Real estate taxes for the previous two years.
11. Form of ownership or operation of the property, whether sole proprietorship, for profit or nonprofit corporation, limited partnership, joint venture, or other.
12. Any other information, including the income tax bracket of the owner, applicant, or principal investors in the property considered necessary by the Commission to determination as to whether the property does yield or may yield a reasonable return to the owners.

C. In considering an application for permit based on immediate and substantial financial hardship, the Review Board must make a finding that without approval of proposed demolition, alteration, remodeling, removal, or construction, or reasonable use of or return from a designated landmark or property within an historic district will be denied a property owner. In this context, personal, family, or financial difficulties, loss of prospective profits, and neighboring violations are not justifiable hardships. In the case of a proposed demolition, the Review Board must make a finding that the designated landmark cannot be remodeled or rehabilitated in a manner which would allow a reasonable use of or return from the property to the property owner. (Emphasis added)

D. In the case of a finding of immediate and substantial financial hardship, this finding shall be accompanied by a plan developed by the applicant to relieve economic hardship. This plan may include, but is not limited to, property tax relief, loans or grants from the County or other private sources, acquisition by fee purchase or eminent domain, use of the State Historic Building Code, redevelopment funds, development fees for historic preservation, changes in applicable zoning regulations, transfer of unused development rights, or relaxation of the provisions of this Chapter sufficient to allow reasonable beneficial use or return from the property. The Review Board and the County shall have a period not to exceed one hundred twenty (120) days to review and adopt a plan in order to relieve economic hardship and to allow the applicant a reasonable use of, and economic return from, the property or otherwise preserve the subject property. If, by the end of this one hundred twenty (120) day period, the Review Board has found that without approval of the proposed work, the property cannot be put to a reasonable economic return therefrom, then the Review Board shall issue a permit approving the proposed work. If the Review Board finds otherwise, it shall deny the application for a permit and notify the applicant by mail of the final denial. (Emphasis added)

E. If approval of a permit will result in the demolition of a designated historical resource, the applicant shall be required to provide documentation of the resource proposed for demolition to the standards of the Historic American Building Survey. Such documentation may include photographs, floor plans, measured drawings, archaeological survey, or other documentation stipulated by the Review Board.

The HRRB should recommend that the CEQA mitigation and remedy for the code violation consist of a plan for a smaller project.

The developer's proposal for a 103 room hotel, 60 time share units, 17 timeshare villas, a "lodge, visitor center, restaurants, culinary training center, wine pavilion, shops, tennis courts, swimming pools, golf instruction center, racquetball pavilion, spa center ...and outdoor/indoor fitness center; a wellness/education center ..., cultural center ..., outdoor amphitheater, vineyards, laundry and maintenance facilities; wastewater treatment system; and re-landscaping ..." has no relationship with the historic use of Paraiso Hot Spring, either in experience or scale. Those are the historic qualities that the HRRB should ensure are preserved.

As LandWatch's comments on the RDEIR propose, the County should limit the size of this project to the number of units historically provided at the site (60 units) in order to mitigate historic resource, visual, traffic, water, and greenhouse gas impacts. The RDEIR implies that a smaller project is not financially feasible, but it does not disclose any information that would support such a finding.

LandWatch submits that the HRRB has the authority and responsibility under MCC section 18.25.175(B) to require the applicant to provide information that would allow the HRRB to determine the smallest project that would provide a "reasonable economic return." MCC section 18.25.175(D). In light of the applicant's violation of the County Code through its unpermitted destruction of historic resources, it is not entitled to anything more.

After the necessary financial disclosures by the applicant, the HRRB should use its authority and responsibility to require the applicant to propose a plan under MCC section 18.25.175(D) that downsizes the proposed project to the smallest project that would provide a reasonable economic return, and in no event larger than the historic use level of 60 units.

Sincerely,



Michael D. DeLapa
Executive Director