



July 30, 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.

With regards to your August 2, 2018 hearing, please note:

**The cost of preparing an EIR is NOT a penalty. It is also not a deterrent for illegal actions by this or other developers.**

County staff suggested that the developer's obligation to fund an EIR should be viewed as part of a penalty for the illegal demolition of the historic structures. Not so.

The County's claim that the EIR was required only because of the illegal demolition is an admission that the demolition resulted in an unavoidable significant impact, which is one of CEQA's triggers for an EIR mandate. But an EIR is also and independently mandated whenever a project opponent offers a fair argument that there will be a significant unmitigated impact.

Here, extensive public comments, supported by facts and expert opinions, undeniably make a fair argument that there will be significant unmitigated impacts to resources areas other than historic resources, including water, traffic, and visual resources. Therefore, regardless of the illegal demolition of the historic structures, this project required an EIR.

Thus, even if the EIR preparation cost were of a sufficient magnitude to act as a deterrent – and there is no evidence that it is – it was not a deterrent here because it was not an additional cost.

**The HRRB should identify its recommended conditions of permit approval as the actions necessary to abate the code violation, not just as CEQA mitigation. The County must address the code violations with separate findings to avoid the developer’s potential evasion of CEQA mitigation conditions.**

As LandWatch explained in its July 9, 2018 letter, the County has the authority and responsibility to require abatement of the code violation by imposing penalties and restoration requirements for violations. Chapter 18.25 of the Monterey County Code, Preservation of Historic Resources. Indeed, the County may not approve any further permits unless it includes a remedy for the violation or unless the violation has been abated. Monterey County Code (“MCC”) 21.84.120.

The County has authority to impose substantial abatement requirements. 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. Here, earth was moved in violation of MCC section 18.25.190, which required a permit before demolition of historic structures.

The County Code authorizes the County to impose stringent penalties and/or restoration requirements, and it does not limit those penalties to such minimal exactions as paying double fees. MCC section 21.84.080. The County’s decision regarding permits involving historic resources should be informed by the HRRB recommendations. MCC section 18.25.080.

Here, the County has already determined that the Project will require an “after-the-fact” demolition permit as well as development permits, both of which require action by the HRRB. MCC sections 18.25.150, 18.25.190. Since these permits must contain remedies for the code violation (see MCC section 21.84.120), these permits should contain a penalty or appropriate development restrictions.

As LandWatch explained, the demolition permit conditions should include either restoration of the property to "its pre-violation state" under MCC section 21.84.130, a financial penalty, or development restrictions sufficient to deter future illegal demolitions. The most suitable development restrictions would limit the Project to the size of the historic use of the site – 60 units.

The County’s authority and responsibility to enforce its historic resources ordinance is entirely independent of its authority to impose appropriate CEQA mitigation. Imposition of a financial penalty or development restrictions as a remedy in the code enforcement action is particularly important here. The EIR justifies the mitigation proposal in part by finding that that baseline conditions should include the cottages that were illegally bulldozed. However, the developer may argue in the future that CEQA mitigation was not legally imposed, relying on CEQA cases in which agencies were not permitted to consider pre-illegal activity conditions to be the baseline.

The developer's attorney also argues that no one had the opportunity to view the historic resource after 2003 when the resort was closed, apparently in an effort to argue that there has been no impact cognizable under CEQA from the loss of the structures. Anthony Lombardo, letter to HRRB, July 24, 2018. These arguments are specious, but to save itself the litigation exposure to these claims, the HRRB and the Supervisors should make it clear that the legal basis of penalties and development conditions imposed on the project for the loss of the historic resources is both CEQA and the County Code provisions regarding Preservation of Historic Resources and illegal demolition.

The July 24, 2018 letter from the developer's attorney dismisses the need for a penalty independent of the CEQA mitigation requirement, arguing that all of the penalty proposals made by members of the public "are outside the scope of CEQA or any Monterey County Ordinance." Anthony Lombardo, letter to HRRB, July 24, 2018. The developer's attorney offers no factual or legal basis for this claim.

Unless the developer can show that doing more than the proposed CEQA mitigation would be a "substantial financial hardship," there is no factual or legal basis to limit the remedy to the proposed CEQA mitigation for the illegal demolition. "Substantial financial hardship" is the showing that the Monterey County historic resources ordinance requires from a developer in order to obtain a demolition permit for a resource that should be protected. MCC section 18.25.175. It would be grossly unfair to absolve this developer of the requirement to show hardship simply because it acted without a permit.

To supports its hardship claim, the developer should be compelled by the HRRB, as the ordinance permits, to provide relevant financial information including cost estimates, income statements and balance sheets, valuations, amounts paid for the property, ownership information, etc. MCC section 18.25.175(B). Based on its evaluation of this information, "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." MCC section 18.25.175(B). Here, unless the HRRB requires a showing of a substantial financial hardship to go beyond the proposed CEQA mitigation, it cannot make the findings that it is required to make to recommend the after-the-fact demolition permit. Because the developer has not even addressed the hardship issue, the record remains inadequate for the HRRB to make the findings it is required to make.

Accordingly, LandWatch again asks that the HRRB require the applicant to demonstrate that it would suffer a substantial financial hardship unless it is permitted to build the Project as proposed instead of at a scale consistent with the historic use - 60 units.

### **The Project should be downsized.**

The developer proposes a mega-resort that has no relationship with the historic use of Paraiso Hot Spring, either in experience or scale:

... 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 ..."

How is this consistent with the history of Paraiso Springs Resort? The context for historic preservation is what's critical here, not simply the architecture and buildings but also the user experience and historic community setting. For more than a century, Paraiso Springs Resort offered a small, quaint experience that a small number of people could enjoy without disturbance to the land or surrounding neighbors. As described in a 1901 route map and promotional brochure:

A visit to Paraiso (Paradise) Springs brings the tourist into a very distinctive part of California. At Castroville, instead of taking the rail line that leads to the Hotel del Monte, we follow up the main Coast Line into the Salinas Valley, the great wheat valley of California. At the old Spanish town of Soledad, 144 miles from San Francisco, we take a stage eight miles across the western half of the valley, and in the wild and rugged Santa Lucia Mountains, which rise blue and bold south of Monterey Bay, we find Paraiso Springs, a thousand feet above the level of the sea. The fine medicinal waters are bland in their effects, and there is hardly an ailment for which they are not a balm. The scenery, hunting and fishing are superb.

This is the history that should be preserved – the quaint, beautiful experience that Paraiso Springs Resort offered with medicinal waters, scenery, and recreation. The Disneyland-style resort makes a mockery of historic preservation.

In summary, as set forth above and in LandWatch's July 9, 2018 letter

- CEQA mitigation is not limited to replacement or interpretation of the lost resource.
- 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 proposed retroactive demolition permit requires a showing of substantial financial hardship, but the record does not support any such finding.
- The HRRB should recommend that the CEQA mitigation and remedy for the code violation consist of a plan for a smaller project.

The HRRB should use its authority and responsibility to require the applicant to propose a plan 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