



# Board of Supervisors Memorandum

P21-14-003

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## FOR BOARD OF SUPERVISORS JULY 1, 2014 PUBLIC HEARING

**TO:** HONORABLE BOARD OF SUPERVISORS

**FROM:** Jim Portner, Hearing Administrator

**DATE:** May 27, 2014

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**DOCUMENT:** P21-14-003

### CONDITIONAL USE PERMIT REQUEST FOR PUBLIC HEARING:

Request of El Cortijo, LLC, on property located at 3700 S. Old Spanish Trail, in the **SR (Suburban Ranch) Zone**, for a conditional use permit for a minor resort. Chapter 18.97 in accordance with Sections 18.17.030.C.5 and 18.07.030.F of the Pima County Zoning Code allows a minor resort as Type II conditional uses in the SR zone. (District 4)

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### CASE BACKGROUND AND PARTICULARS

The applicant proposes to construct and operate a minor resort, which they have tentatively named "Bike Ranch Resort", on 21.21 acres located near the northwest corner of the intersection of S. Old Spanish Trail and E. Escalante Road. The Resort would contain forty-nine (49) one and two-story lodging units for visitors, together with a complement of related uses, including a bicycle rental and repair shop, an exercise facility and performance lab, and a small restaurant. The applicants indicate an intention to obtain LEED certification for the project. They have also indicated a willingness to covenant that the balance of the property holdings (23.98 acres to the adjacent west of the Resort site) would be left undeveloped.

### SUMMARY OF THE HEARING ADMINISTRATOR MEETING

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on May 21, 2014. The owner presented the case to the satisfaction of the hearing administrator and answered his questions.

Approximately one hundred fifty (150) people attended the hearing, thirty-two (32) of which chose to speak on the matter, with five (5) being in support of the request and the remainder expressing opposition in one form or another. The hearing lasted approximately three hours.

Several speakers expressed outright opposition to the request, while most in objection indicated their belief that the use itself could be a good one for Tucson, but that the particular location proposed was simply inappropriate. The primary objections cited in this latter regard were: 1) a perceived negative impact upon Saguaro National Park and the potential for a diminishment of park visitor's experience; 2) the belief that the introduction of a new commercial use into the existing low-density residential and national park context would set a dangerous precedent for future land-use decisions and undermine the purposes of the *Buffer Overlay Zone Ordinance*; 3) concerns regarding safety on the adjacent roadways due to the mixing of existing high-speed vehicular traffic with an increased volume of bicyclists; and 4) a negative impact on wildlife movement.

Speakers in support stressed the fact that Tucson has established itself as an international cycling destination and that the proposed facility would further build this reputation and provide expanded cycling opportunities for both visitors and local enthusiasts. There was a recognition that the City of Tucson and Pima County had expanded our bicycling infrastructure significantly in the past several decades and that this investment merited the further support of the cycling community by approving a facility, like the one proposed, which intended to further serve it.

After hearing all of the above and thanking all in attendance for their testimony, the Hearing Administrator closed the public hearing.

Subsequent to the hearing, staff forwarded to the Hearing Administrator copies of all letters and documents that were entered into the record at the public hearing. Same were duly contemplated in the decision rendered below.

#### HEARING ADMINISTRATOR'S RECOMMENDATION

After having visited the subject property prior to the 21 May, 2014 public hearing, after contemplating all of the facts and the testimony presented at same, and after having subsequently reviewed all of the written correspondence and documents that were entered into the record at the hearing, the Hearing Administrator recommends **DENIAL** of this request for a Type II conditional use permit to operate a minor resort. The request is considered premature at this point, with significant further work being necessary by the applicant before any type of approval recommendation is warranted.

The applicant is advised that this is a *recommendation* to the Board of Supervisors, who will make the ultimate and final decision on this CUP request. The above recommendation is rendered to the Board with the following attendant comments being made on the matter:

1. The vision behind the proposed use is, inherently, found to have significant potential merit. The creation of a facility that specifically serves the local and worldwide cycling community has obvious potential benefits to our city's international reputation, while also creating desirable opportunities for appropriate economic development.
2. If well designed, both architecturally and environmentally, the proposed resort could be a compatible and complementary use to nearby Saguaro National Park East. The illustrative and design materials submitted to date in this regard are insufficient in their detail to determine whether this level of sensitivity and architectural quality is achieved.
3. It is the position of this Hearing Administrator that none of the issues raised in opposition to this request are inherently unresolvable if all parties involved would engage each other in meaningful, dedicated, and good-faith discussions to dutifully hammer out their concerns and explore acceptable solutions and alternatives, including potential design and scope modifications to the project.
4. It is also the position of this Hearing Administrator that the duty and responsibility to initiate, coordinate, and engage such dedicated and on-going discussions is one that falls squarely on the shoulders of the applicant. It is apparent that insufficient due diligence has occurred in this regard to date, or at least none to the degree necessary to begin delving beneath the proverbial surface of things to resolve the myriad questions and concerns that exist amongst the stakeholders and nearby neighborhood interests.
5. This Hearing Administrator has, numerous times in the past, approved conditional use permit requests where there was a manageable array of remaining unresolved neighborhood and stakeholder issues. In these past cases, sufficient prior dialogue had occurred between the parties such that it was possible to craft a set of reasonable special conditions and requirements which addressed and mitigated the remaining issues and which held the applicant responsible for doing so.
6. In the present case, the magnitude and breadth of concerns remaining is beyond the scope of some set of special conditions and requirements that could be intelligently crafted by an independent third party. Any such set promulgated by this Hearing Administrator would be presumptuous, in that it would be crafted without the benefit of any meaningful input derived from prior applicant, stakeholder, and neighborhood representative cooperative interactions.
7. While it is not uncommon for projects in this community to engender controversy, the path to successfully bringing them to fruition and approval has always involved a dedicated process wherein the applicant/developer works together with local stakeholders and neighborhood interests, and all parties conduct themselves in a good-faith manner toward this end. The present application still has substantial labor lying ahead of it in this regard.

### **REQUIRED STANDARDS AND FINDINGS**

Following are the Hearing Administrator's findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

**1. It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.**

The Pima County Comprehensive Plan designates this site as *Resource Transition (RT)*, the purpose of which is to, “preserve the open space characteristics of development sensitive lands in the vicinity of public resource management units, to promote development that blends with the natural landscape, to extend visually the public land boundaries, and to protect wildlife habitat.” The entire one-mile area between S. Old Spanish Trail and the Melpomene Road alignment carries this same designation as a buffer to Saguaro National Park East.

It is the Hearing Administrator’s finding that the proposed minor resort is not automatically or inherently in conflict with the Resource Transition (RT) designation. However, this is definitely a matter wherein the proverbial devil lies in the details, and where manifold stakeholder and neighborhood interests remain unaddressed. An accurate and reliable assessment as to whether this proposed use is consistent with the objectives of the *Resource Transition (RT)* category -- and whether it is compatible, in the long-term, with its existing context – can only be made once the applicant has formulated substantially more design detail and has duly completed a full exploration and vetting of all surrounding stakeholder and neighborhood issues, and only after a good-faith effort has been exerted to discuss potential modifications and refinements and to generally seek some measure of common ground amongst all parties. Nothing approaching this level of outreach and good-faith effort has been made to date.

With all of the above in mind, it is found that a finding cannot yet be made that the proposed request is consistent with the objectives of the *Resource Transition* designation.

**2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.**

It is the Hearing Administrator’s position that the proposed conditional use application has, to date, left unaddressed an array of neighborhood issues and stakeholder interests that directly relate to the type of measures that would be necessary to appropriately safeguard adjacent properties.

**3. It has adequate accessibility to the County road network.**

The site has direct access to Old Spanish Trail and Escalante Road, both of which are paved, major streets on the Pima County *Major Streets & Routes Plan (MSRP)*. The Pima County Department of Transportation (PCDOT) memorandum accompanying this recommendation indicates that these streets have adequate capacity to accommodate the proposed project and has no objection to the request, subject to the dedication of appropriate additional rights-of-way.

**4. It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.**

Required parking is matter that is verified at the time of formal *Development Plan* review and processing.

**5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.**

It is the Hearing Administrator's finding that none of the above issues, with the possible exception of noise, would pose a problem for the surrounding context.

**6. Hours of operation will not be detrimental to adjoining residents.**

Hours of operation is a relevant issue, one which is best resolved through meaningful dialogue and negotiation with nearby stakeholders and neighborhood interests.

**7. Landscaping will be fully in conformance with zoning code regulations.**

Conformance with Code-required landscaping/buffering regulations is matter that is verified at the time of formal *Development Plan* review and processing. The applicant's submitted site plan would appear to show buffers in excess of Code requirements.

**SONORAN DESERT CONSERVATION CONCEPT PLAN/ENVIRONMENTAL ISSUES**

**Comprehensive Plan Regional Environmental Policies — Conservation Lands System**

In December, 2001 the Board of Supervisors incorporated the Maeveen Marie Behan Conservation Lands System (MMB-CLS) into the Comprehensive Plan 2001 Update as the Regional Environmental Policies. The MMB-CLS is the heart of the Sonoran Desert Conservation Plan (SDCP). On June 21, 2005, the Board of Supervisors amended the Comprehensive Plan Regional Environmental Policies and the MMB-CLS to reflect recommendations from the SDCP Science Technical Advisory Committee that were based on new scientific and technical data. As adopted, Conservation Guidelines associated with the MMB-CLS establish conservation objectives for a variety of projects (e.g. rezoning actions, comprehensive plan amendments, Type II and Type III conditional use permits, etc.) that require a discretionary decision by the Board of Supervisors. Conservation objectives include:

1. Important Riparian Areas — 95% undisturbed natural open space
2. Biological Core Management Areas — 80% undisturbed natural open space
3. Special Species Management Areas — 80% undisturbed natural open space
4. Multiple Use Management Areas — 66-2/3% undisturbed natural open space

A portion of the subject site along Escalante Road is designated as *Important Riparian Area (IRA)* by the SDCP's Biologically-Preferred Reserve System. The balance (and majority) of the site is **OUTSIDE OF** the Maeveen Marie Behan Conservation Lands System (MMB-CLS). It appears that the *IRA* portions of the property can be treated in accordance with the CLS's 95% preservation threshold.

### **Staff Commentary on Biological Impacts**

As mentioned above, a portion of the subject property is designated as *Important Riparian Area (IRA)* by the Conservation Lands System. In the event that this designated *IRA* is treated in accordance with CLS threshold preservation requirements, this application is not expected to negatively affect any resources essential to Pima County's biological conservation priorities and it would not be in conflict with the Regional Environmental Policies of the 2001 Comprehensive Plan Update.

This application proposes new construction on property that has been partially disturbed by the prior construction of eight residences and associated improvements. Additional areas would be disturbed and be subject to normal regulatory requirements of the Pima County *Native Plant Preservation Ordinance (NPPO)*.

### **Facts Confirmed by the Pima County Geographic Information System (GIS)**

The following facts are confirmed by the Pima County GIS and the Sonoran Desert Conservation Plan maps with respect to this conditional use permit request:

**Cactus Ferruginous Pygmy Owl.** The subject property is located within an area that is not designated as former critical habitat or draft recovery area. It is within Survey Zone 2. This site is within the Priority Conservation Area (PCA 1) for this species.

**Western Burrowing Owl.** The subject property is not located within the Priority Conservation Area (PCA) for this species.

**Pima Pineapple Cactus.** The subject property is located within a general area that is outside of the known range for the Pima Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**Needle-Spined Pineapple Cactus.** The subject property is located within a general area that is outside of the known range for the Needle-Spined Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**DEPARTMENT OF TRANSPORTATION, REGIONAL FLOOD CONTROL DISTRICT  
RECOMMENDATIONS:**

The Department of Transportation and the Regional Flood Control District have reviewed this project and offered their comments; neither objects to the request. Their respective memoranda are included in the Board of Supervisors packet on this item.

attachments

cc: Carmine DeBonis, Director, Development Services  
Yves Khawam, Chief Building Official  
Arlan Colton, Planning Official  
Carmine DeBonis, Chief Zoning Inspector  
El Cortijo, LLC, Property Owner and Applicant