

Harbor Village FAQ

I. BACKGROUND:

Q: What is Harbor Village?

A: Harbor Village is a development planned for the open land northwest of the Highway 1 and Capistrano intersection in El Granada, opposite the El Granada Harbor. The plans call for:

- A hotel with 84 rooms and 11 “family suites” (seven of them two-bedroom) for a total of 102 bedrooms.
- A 280-seat restaurant
- A 60-seat bar
- 15 to 25 retail shops
- subsurface and ground-level parking for 450 cars

Q: How far along is Harbor Village in the planning process?

A: The project has a long history, and has almost all of the approvals needed for construction. After a long history of appeal and litigation, the project has a valid Coastal Development Permit from the Coastal Commission and needs only building permits from the County.

Here are some highlights of the project’s 17-year history:

May 1988	Application submitted planning permit applications for the project
Jun & Jul 1989	Public hearings by Planning Commission
Sep 1989	Unanimous approval by Planning Commission;
Sep 1989	This decision was appealed to the Board of Supervisors by the Concerned Citizens of the Coastsides (CCC).
Dec 1989	The Board of Supervisors denied the CCC’s appeal and approved the project for a term of two years.
Dec 1989	This decision was appealed to the Coastal Commission by CCC.
Mar 1990	Coastal Commission denied the appeal against recommendations of Commission staff
Mar 1990	CCC files suit to overturn County’s CEQA findings of overriding economic considerations.
Jul 1991	Court judgment in favor of CCC and denying the project
Jun 1993	Lower court decision overturned on appeal
Nov 1994	Board of Supervisors approves procedure for adopting development agreements
Mar 1995	Planning Commission unanimously recommends adoption of development agreement for the project
May 1995	Board of Supervisors unanimously approved development agreement with a term of ten years

95 -96	Keet Neerhan buys property from Harbor Village Associates
2000	Construction of a few small buildings to satisfy development agreement requirement that construction begin by fifth anniversary of the agreement
Jun 2004	Mr. Neerhan files application for building permit for the retail portion only

Q: Why did you fight this project through the County, the Coastal Commission and Courts?

A: This hotel-bar-restaurant-retail complex is clearly out-of-scale with the existing buildings around the harbor in El Granada. Existing buildings are small, and mostly single-story; the two-story hotel would be huge in comparison. Parking lots typically handle dozens of vehicles; the project would include parking for 450. The 280-seat restaurant and 60-seat bar would be huge in comparison to the typical harbor dining establishment.

In addition, the size and placement of the hotel complex would block a prime view of the harbor and the ocean from Highway 1. (We also believed that the out-of-scale project would bring out-of-scale traffic to the harbor, a consideration the County did not find convincing.)

Q: What was the nature and outcome of your appeal to the Coastal Commission?

Both the considerations of appropriate scale and protecting views from Highway 1 are cause, under the California Coastal Act, for disallowing a development, and were the basis of our appeal to the Coastal Commission.

Though the professional staff of attorneys and land-use planners at the Coastal Commission recommended the project be rejected, the Commissioners denied our appeal was denied. The CDP (Coastal Development Permit) for the project is now fully vested and not subject to lapse or appeal.

We then filed suit against the County and the developer under CEQA (California Environmental Quality Act), as covered next.

Q: What was the nature of your suit against the County, and what was finally decided by the Court of Appeals?

A: Our legal argument was centered on provisions in CEQA (California Environmental Quality Act) that allowed the County to argue that the economic advantages of the hotel-bar-restaurant-retail project outweighed the environmental harm. The County estimated that the project would provide:

- Between 130 and 160 new jobs, with a direct payroll estimated at \$3.5 million/year
- Hotel and sales taxes of \$1 million per year
- \$240,000/year in property taxes
- Unspecified “multiplier effect” of indirect jobs and taxes

We disagreed with that assessment, and with the environment-for-economy tradeoff the County was willing to make. The lower court agreed with us, but was reversed on appeal.

II. CURRENT EVENTS:

Q: What's special about the recent application for a building permit? Doesn't Mr. Neerhan have all the County and Court decisions on his side? Isn't this just a detail?

A: The development agreement with the County specifically states that the "Owner agrees to complete construction of the Project during the term of this Agreement." Now, with less than a year to go in the development agreement, Mr. Neerhan ... who bought the property knowing of this condition ... is only now applying to build the smaller part of the whole project.

[The agreement qualifies this with "subject to delay caused by events described in Paragraphs 7.F and 15.E (Force Majeure)." Paragraph 15.E gives a familiar list of events, including "war, insurrection ... (and) acts of God." There is no paragraph 7.F in the document.]

Q: Is there any reason to believe that the entire project won't be built?

A: There are compelling reasons to believe the entire project will not be built. Mr. Neerhan has previously expressed his desire to downsize the project but balked at this when he was advised that the public hearing process would resume. Now he appears to be asking for building permits for only part of the project, and it seems evident that the project cannot be completed by May 2005.

Q: Would it be a bad thing if the County "overlooked" the construction of the rest of the project, including the hotel, bar and restaurant?

A: There's a larger point here: the integrity of the public planning process.

At the heart of the County's approval of the project, and its victory in the Appeals Court, is their detailed estimates of economic benefits from the project as a whole. But there is

- NO County finding that the retail portion alone would be justifiable under CEQA's environmental rules without these overriding economic concerns.
- NO separate economic justification for the project without the hotel, bar and restaurant.
- NO Court decision approving the project or any part of it without these benefits to the economy.

The first recital in the development agreement declares its purpose "to strengthen the public planning process." Our concern is that the development agreement, and the County's enforcement of it, will do just the opposite.

Q: So this would be, in effect if not intent, a subversion of the public planning process and a possible violation of CEQA?

A: Yes, that is our opinion as lay people. If the County and Mr. Neerhan were to “overlook” the rest of the project, we would in effect have un-elected County staff making major planning decisions without the benefit of public input and oversight.

Q: But if the County doesn't give Mr. Neerhan the building permit, isn't that a violation of his property rights?

A: Mr. Neerhan's ability to develop the project is defined by his contract ... the development agreement ... with the County. When he bought the property, he knew about the terms of the contract and agreed to it; nothing was forced on him after-the-fact. Under that contract, he has both privileges and responsibilities. If he chooses not to fulfill his responsibilities, he cannot expect all his privileges. Mr. Neerhan would lose nothing that he had not already willingly given up by his own inaction.

If Mr. Neerhan were to abandon this project and work with the community, the County and the Coastal Commission on a design that fits and serves the coastsides better, he might lose nothing but time. He has lost five years on a bad design already when he could have been working on ... and perhaps building ... a better one.

Q: Couldn't the County extend the development agreement to give Mr. Neerhan more time?

A: There is a provision for an optional extension of no more than five years. The language of the development agreement implies that:

- Such an extension would allow completion of construction already in progress that had been delayed by “war, insurrection ... (and) acts of God.” [Paragraph 15.E] There is no specific provision for extending the agreement in the event that construction of the largest portion of the project had not yet begun, though that would seem to be an option.
- Such an extension seems to require public hearings

Q: Do you oppose such an extension?

A: Yes. An extension would preclude the opportunity to finally plan an appropriate project for the site.

What we really want is for Mr. Neerhan, the County, and the community to sit down together and come up with a much better plan for the property. The project Mr. Neerhan wants to build was a bad idea in the late 80's and is a much worse idea now.

We don't need more hotels. We don't need low-paying jobs bussing tables and selling curios to tourists. We don't need businesses that bring in more traffic on weekends, since we can hardly handle what we have now; we need businesses that allow people to work on the coast and pay their mortgages without driving over 92.

When Mr. Neerhan and the County are willing to talk about serving our needs today, we'll be there to talk with them.

III. USEFUL DEFINITIONS:

Q: What is a Coastal Development Permit?

A: "Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Coastal Commission or the local government." ...

www.coastal.ca.gov/whoweare.html

The Concerned Citizens of the Coastsides asked the Coastal Commission to deny the "CDP," but the Commission ... voting against the recommendation of its staff ... approved the permit. The permit is "vested" and does not expire, nor is the CDP itself subject to appeal.

Q: What is a "development agreement?"

A: "A binding contract between a developer and a city or county establishing the conditions under which a particular development may occur. The local government 'freezes' the regulations applicable to the site for an agreed upon period of time."

ceres.ca.gov/planning/plan_comm./part4.html