



Planning Commission Staff Report

Date: April 8, 2009

Case No.: Case 5.0909 Conditional Use Permit

Application Type: Recommendation to City Council to Revoke a Conditional Use Permit

Location: 415 S. Belardo Road

Applicant: Initiated by Staff; Original CUP Applicant: Brad Korzen

Zone: R-3

General Plan: Small Hotel

APN: 513-212-004

From: Craig A. Ewing, AICP, Director of Planning Services

SUMMARY

On November 8, 2006, the Planning Commission directed staff to begin revocation proceedings on the Conditional Use Permit (Case No. 5.0909) for the Viceroy Hotel. In accordance with Section 94.02.00.I, the City Council may revoke an existing Conditional Use Permit if it finds that the use permitted by the CUP is not being conducted in compliance with the conditions of approval.¹ Staff believes that the Viceroy Hotel at 415 S. Belardo Road has not satisfied certain conditions associated with its CUP. Prior to submitting the item to the City Council, staff has scheduled a hearing before the Planning Commission so that it may review the matter, accept public comment and adopt a recommendation to the City Council.

¹ 94.02.00.I. Revocation or Voiding of Conditional Use Permit.

1. The council, with or without a recommendation from the planning commission, may, after notice and public hearing, revoke any conditional use permit for noncompliance with any of the conditions set forth in granting the permit.

BACKGROUND

On July 24, 2002, the Planning Commission approved a Conditional Use Permit (Case 5.0909-CUP) to allow a restaurant, spa and other accessory facilities at the existing Viceroy Hotel (formerly Estrella Inn). Among the conditions of approval were certain improvements along the property's Belardo Road and Cahuilla Road frontages, including landscape plans, a parking management program, activities program, and street improvement plans.

On February 26, 2003, the Planning Commission approved the submitted parking management program, with the condition that the applicant submit detailed construction plans for the required Belardo Road and Cahuilla Road street improvements.

On June 25, 2003, the Planning Commission reviewed the applicant's street improvement plans, and approved staff's recommended improvements along the Belardo Road and Cahuilla Road frontages.

On July 8, 2003, Ms. Sheryl Hamlin, on behalf of the Historic Tennis Club Neighborhood Organization and Historic Tennis Club District Hotel Association, filed an appeal of the Planning Commission's approval of the required Belardo Road and Cahuilla Road street improvements.

On September 17, 2003, the City Council considered the appeal filed by Ms. Hamlin, and upheld the Planning Commission's approval of the required street improvements on Belardo Road. However, with regard to Cahuilla Road, the City Council returned the street improvements to the Planning Commission for further review.

During November, 2004, the Planning Commission conducted studies of the proposed street plans. Subsequently, neighborhood meetings were held to review the revised street improvement plans.

On May 11, 2005, the Planning Commission reviewed and approved the final concept plans for the required Cahuilla Road street improvements. No appeal was filed.

On November 8, 2006, the Planning Commission concluded that the conditions regarding the installation of street and parking improvements had not been implemented, and directed staff to set a revocation hearing for the CUP.

ANALYSIS

On July 24, 2002, a Conditional Use Permit was granted by the City to allow the Estrella Inn (now, Viceroy Hotel) to add a restaurant and spa as accessory uses to the hotel operation. These uses were initiated by the applicant and continue operation today, with dining and spa services available to the public, as well as to hotel guests.

With the uses available to the public, additional parking is required, in accordance with the Palm Springs Zoning Code. A parking plan was approved with the CUP to meet this

requirement, including parallel parking along Belardo Road and bay (or "head-in") parking along Cahuilla Road. While the plan has undergone several revisions since the CUP was issued, improvements based on the plan have not been installed and according to the Department of Public Works, several CUP conditions remain unsatisfied, including:

CAHUILLA ROAD SOUTH

- 1. Dedicate an easement for sidewalk and pedestrian purposes to the City of Palm Springs across the frontage of the property as necessary to facilitate construction of the sidewalk as shown on the approved site plan.*
- 2. Construct 2 feet wide concrete ribbon gutter with a flowline 20 feet easterly of the centerline of Cahuilla Road along the entire frontage of the property, subject to the approval of the City Engineer. The concrete ribbon gutter shall be constructed with decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.*
- 3. Remove the existing curb, gutter, driveway approach, sidewalk, and bay parking spaces located along the frontage of the property.*
- 4. Construct minimum 24 feet wide driveway approaches at the locations shown on the approved site plan. The driveway approaches shall be constructed of decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.*
- 5. Construct a 6 inch barrier curb along and around all bay parking spaces, in accordance with City of Palm Springs Standard Drawing No. 200. The concrete curb shall be constructed with decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.*
- 6. Construct a minimum 4 feet wide sidewalk along the entire frontage of the property, in the location as shown on the approved site plan. The concrete sidewalk shall be constructed with decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.*
- 7. Remove and replace existing pavement with a minimum pavement section of 2½ inch asphalt concrete pavement over 4 inch crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction from edge of proposed gutter to clean sawcut edge of pavement in accordance with City of Palm Springs Standard Drawing No. 315. If an alternative pavement section is proposed, the pavement section shall be designed, using "R" values, by a licensed Soils Engineer and submitted to the City Engineer for approval.*

BELARDO ROAD SOUTH

1. *Construct an 8 foot wide sidewalk behind the curb where not already existing (remove the existing asphalt sidewalk and replace) along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210.*
2. *Remove the depressed curb and gutter located 20 feet WEST of centerline and replace with 6 inch curb and gutter located 20 feet WEST of centerline along the parallel parking spaces, per City of Palm Springs Standard Drawing No. 200.*
3. *Remove and replace existing pavement with a minimum pavement section of 3 inch asphalt concrete pavement over 6 inch crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal, from edge of proposed gutter to clean sawcut edge of pavement along the parallel parking spaces in accordance with City of Palm Springs Standard Drawing No. 315. The pavement section shall be designed, using "R" values, by a licensed Soils Engineer and submitted to the City Engineer for approval.*

The Belardo Road improvements are necessary to remove non-conforming parking spaces located behind the curb and to provide a standard sidewalk along this commercial frontage. The Cahuilla Road improvements are necessary to construct standard driveway approaches and sidewalks to facilitate the new bay parking spaces that would be constructed to meet the additional parking demand. The Planning Commission's approval of the CUP was also subject to approval of landscape plans, a parking management program, activities program, and other requirements.

The applicant has been notified of the deficiencies regarding the CUP conditions of approval. Since 2002, only partial steps have been taken toward satisfaction of the conditions, largely limited to submitting a street improvement plan. However, the City has completed the plan check and has been prepared to issue a permit to construct the improvement since May 2005. No actual construction has taken place.

In the past three months, the applicant has renewed its attention to the CUP's unmet conditions, and has met with staff and with some nearby residents to express its concerns with the costs of the required improvements and the effect of revocation of the CUP.²

On March 26, 2009, following the neighborhood meeting, staff received a list of proposed plan revisions and a schedule for plan implementation to the Belardo and

² The applicant has control of the adjacent La Serena Villas, which is being reviewed by the City Council concerning potential historic designation. However, the La Serena Villas are not a part of this Conditional Use Permit and have no bearing on the potential revocation or any associated conditions of approval.

Cahuilla Road frontages (see attachment). While "Phase 1" of the plan relates to La Serena Villas and is unrelated to the present CUP, the remaining four phases address the parking and related requirements:

Viceroy Palm Springs Street Improvement Plan Pursuant to the CUP

Phase 2: Scope of work to be completed between June – Dec 2009:

- *Level remainder of Cahuilla Road to prepare for asphalt installation*
- *Install white pebble rock or similar to top of dirt grade for entire property line on Cahuilla until asphalt installation*
- *Submit to Planning Commission for review and approval of revised Cahuilla conceptual plans as previously approved by HTCNO Board*
- *Preparation and submittal of Cahuilla construction drawings*

Phase 3: Phase 3 to commence when and only when Viceroy Palm Springs reaches revenue per average room (REVPAR) of \$250. Scope of work to be completed:

- *Begin Belardo project pursuant to revised street improvement plans submitted to and approved by the City*
- *Complete proposed 5-foot sidewalk located in front of the South side of the Viceroy Palm Springs along Belardo*

Phase 4: Implementation of Phase 4 to commence upon completion of Phase 3 so long as Viceroy Palm Springs per average room (REVPAR) remains at \$250 after completion of Phase 3 improvements. Scope of work to be completed:

- *Complete proposed 5-foot sidewalk on the North side of Viceroy Palm Springs.*
- *Belardo Road street improvements to be completed at this time pursuant to City-approved plans*

Phase 5: Implementation of Phase 5 to commence upon completion of Phase 4 so long as Viceroy Palm Springs per average room (REVPAR) remains at \$250 after completion of Phase 4 improvements. Scope of work to be completed:

- *Completion of Cahuilla parking lots, sidewalks and landscape improvements pursuant to revised street improvement plans*
- *Remainder of Cahuilla street improvements completed pursuant to revised street improvement plans.*

Subsequently, on April 2, 2009, the Viceroy submitted a letter offering additional amendments to their proposed plan and schedule. (The letter is attached to this report, but no plans were included.) While Staff has not had sufficient time to reconcile the proposals; however, staff notes that at a minimum the required number of spaces must be provided in accordance with the Zoning Code. No reduction in the number of spaces may be granted without a variance or minor modification to the parking standards. However, the actual design and materials for the improvements are subject to modification from standard by staff or the Commission, in accordance with Section 93.06.B.10:

10. *Administrative Relief.*

The director of planning and building may grant a reduction of width of required parking spaces by not more than six (6) inches and modification of other design standards subject to the finding that special circumstances would deprive the subject property of privileges enjoyed by other properties in the vicinity. Administrative relief from the number of parking spaces required by this section may be granted by the director of planning and building in the manner set forth in Section 94.06.01 (Minor modification).

As noted, relief may be granted only after determining that, "...special circumstances would deprive the subject property of privileges enjoyed by other properties in the vicinity." Under the proposed multi-phase schedule, the project would ultimately build to the City's standards, but such build-out would be dependant on the successful operation of the hotel, which may take one, two or five years, or perhaps many years.

Staff does not support such an open-ended commitment to build the improvements. Staff can support modifying the design standards on a temporary basis, but we believe that there must be a firm schedule for implementation. Consequently, staff recommends that the Commission consider adding specific time requirements to the multi-phase program, as follows:

Phase 2	As stated, but completed no later than October 1, 2009
Phase 3	As stated, but completed no later than October 1, 2010
Phase 4	As stated, but completed no later than October 1, 2011
Phase 5	As stated, but completed no later than October 1, 2012

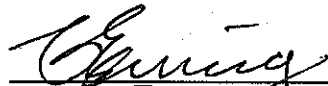
Based on the above analysis, the Planning Commission may consider an action from the following options:

1. Adopt an unconditional recommendation for revocation for failure to comply with the Conditions of Approval.
2. Adopt a recommendation to modify the Conditions of Approval. Such modifications may be based on the analysis contained in this report, or other conditions.
3. Adopt a recommendation to not revoke the permit.

Based on the Commission's direction, a final resolution will be presented at the next meeting.

NOTIFICATION

The staff report and agenda have been forwarded to the applicant. Notice has been mailed to all property owners within 400 feet of the subject property in advance of the hearing.



Craig A. Ewing, AICP
Director of Planning Services

ATTACHMENTS

1. Revised Approved Conditions, (June 25, 2003)
2. Approved Amended Conditions (May 11, 2005)
3. Memorandum from Assistant Director of Public Works / Assistant City Engineer (November 1, 2006)
4. Planning Commission Staff Report (November 8, 2006)
5. Planning Commission Meeting Minutes, excerpt (November 8, 2006)
6. Letter to Viceroy (November 24, 2008)
7. Viceroy Hotel's Proposed Street Improvement Plans (March 26, 2009)
8. Viceroy's Letter (April 2, 2009)

CITY OF PALM SPRINGS

APPROVED BY PLANNING COMMISSION

Case # _____ Date _____ Initial _____

APPROVED BY CITY COUNCIL

Case # _____ Date _____ Initial _____

Resolution # _____ Ordinance # _____

APPROVAL SUBJECT TO ALL REQUIRED

CONDITIONS BY ABOVE BODIES

EXHIBIT B

CASE 5.0909

ESTRELLA INN
415 BELARDO ROAD

REVISED CONDITIONS OF APPROVAL

June 25, 2003

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

PLANNING DEPARTMENT:

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations.
 - 1a. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case 5.00909-CUP. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive further indemnification hereunder, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.
2. Non-compliance with any of the conditions of this approval, or with City codes and ordinances, State laws; any valid citizen complaints or policing and safety problems (not limited to excessive alcohol consumption, noise, disturbances, signs, etc) regarding the operation of the establishment; as determined by the Chief of Police or the Director of Planning and Building, may result in commencement of proceedings to revoke the Conditional Use Permit pursuant to Section 9402.001 of the Zoning Ordinance. In addition, violations of City Codes and Ordinances will result in enforcement actions which may include citations, arrest, temporary business closure, or revocation of this permit in accordance with law.

3. That the property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.
4. The appeal period for a Conditional Use Permit application is 15 calendar days from the date of project approval. Permits will not be issued until the appeal period has concluded.
5. No sirens, outside paging, music speaker system or any type of signalization will be permitted except approved alarm systems.
6. Prior to issuance of a grading permit, a Fugitive Dust and Erosion Control Plan shall be submitted and approved by the Building Official. Refer to Chapter 8.50 of the Municipal Code for specific requirements.
7. The grading plan shall show the disposition of all cut and fill materials. Limits of site disturbance shall be shown and all disturbed areas shall be fully restored or landscaped.
8. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Engineering specifications.
9. Separate architectural approval and permits shall be required for all signs. A detailed sign program shall be submitted for review and approval by the Planning Commission prior to issuance of building permits.
10. All materials on the flat portions of the roof shall be earth tone in color.
11. All roof mounted mechanical equipment shall be screened from all possible vantage points both existing and future per Section 9303.00 of the Zoning Ordinance. The screening shall be considered as an element of the overall design and must blend with the architectural design of the building(s). The exterior elevations and roof plans of the buildings shall indicate any fixtures or equipment to be located on the roof of the building, the equipment heights, and type of screening. Parapets shall be at least 6" above the equipment for the purpose of screening.
12. No exterior downspouts shall be permitted on any facade on the proposed building(s) which are visible from adjacent streets or residential and commercial areas.
13. An exterior lighting plan in accordance with Zoning Ordinance Section 93.21.00, Outdoor Lighting Standards, shall be submitted for review and approval by the Director of Planning & Building prior to the issuance of building permits. Manufacturer's cut sheets of all exterior lighting for all new improvements, in the landscaping, and in the parking lot shall be submitted for approval prior to issuance of a building permit. If lights are proposed to be

mounted on buildings, down-lights shall be utilized. A photometric study shall be required for all parking areas, driveways and entries.

14. Parking lot light fixtures in new parking areas shall align with stall striping and shall be located two to three feet from curb face.
15. This project shall be subject to Chapters 2.24 and 3.37 of the Municipal Code regarding public art. The project shall either provide public art or payment of an in lieu fee. In the case of the in-lieu fee, the fee shall be based upon the total building permit valuation as calculated pursuant to the valuation table in the Uniform Building Code, the feeing being 1/2% for commercial projects or 1/4% for residential projects with first \$100,000 of total building permit valuation for individual single-family units exempt. Should the public art be located on the project site, said location shall be reviewed and approved by the Director of Planning and Building and the Public Arts Commission, and the property owner shall enter into a recorded agreement to maintain the art work and protect the public rights of access and viewing.
16. Vehicles associated with the operation of the proposed development including company vehicles or employees vehicles shall not be permitted to park off the proposed building site unless a parking management plan has been approved.
17. Prior to the issuance of building permits, locations of all telephone and electrical boxes must be indicated on the building plans and must be completely screened and located in the interior of the building. Electrical transformers must be located toward the interior of the project maintaining a sufficient distance from the frontage(s) of the project. Said transformer(s) must be adequately and decoratively screened.
18. Parking islands of not less than 9 feet in width with a minimum of 6 feet of planter shall be provided every 10 new parking spaces. Additional islands may be necessary to comply with shading requirements in #19 below.
19. Shading requirements for new parking lot areas as set forth in Section 9306.00 of the Zoning Ordinance shall be met. Details to be provided with final landscape plan.
20. Parking stalls for new parking shall be delineated with a 4 to 6 inch double stripe - hairpin or elongated "U" design. Individual wheel stops shall be prohibited; a continuous 6" barrier curb shall provide wheel stops.
21. Concrete walks with a minimum width of two (2) feet shall be installed adjacent to new end parking spaces or end spaces shall be increased to eleven (11) feet wide.
22. Tree wells shall be provided within the new parking lot and shall have a planting area of six feet in diameter/width.
23. Standard parking spaces for new spaces shall be 17 feet deep by 9 feet wide; compact sized spaces shall be 15 feet deep by 8 feet wide. Handicap parking spaces shall be 18 feet deep by 9 feet wide plus a 5 foot walkway at the right side of the parking space; two (2) handicap spaces can share a common walkway. One in every eight (8) handicap accessible spaces, but not less than one (1), shall be served by an 8 foot walkway on the right side and shall be designated as "van accessible".

24. Handicapped accessibility shall be indicated on the site plan to include the location of handicapped parking spaces, the main entrance to the proposed structure and the path of travel to the main entrance. Consideration shall be given to potential difficulties with the handicapped accessibility to the building due to the future grading plans for the property.
25. Compact and handicapped spaces shall be appropriately marked per Section 9306.00C 10.
26. Curbs shall be installed at a minimum of five (5) feet from face of walls, fences, buildings, or other structures. Areas that are not part of the maneuvering area shall have curbs placed at a minimum of two (2) feet from the face of walls, fences or buildings adjoining driveways.
27. In the event that parking problems occur as a result of this project, the applicant shall be required to provide an expanded parking management program which address parking both on-site and off-site.
28. Any additional signage permitted shall be limited to on-site convenience signs primarily for the benefit of hotel guests.
29. The applicant shall submit revised architectural elevations for the meeting room facility for review and approval by the Planning Commission.
30. The applicant shall submit a parking management plan and revised site plans for the Cahuilla Road street frontage, including upgraded bay parking and enhanced decorative landscaping with planter islands and shade trees for review and approval by the Planning Commission.
31. Outdoor amplified music shall be prohibited. The applicant shall adhere to the noise ordinance (Municipal Code Section 11.74).
32. The applicant shall prepare engineered street improvement and parking lot plans and landscape plans for review by the Planning Commission within 60 days (by April 28, 2003).
33. The applicant shall provide security equal to the cost of constructing all remaining on site and off site improvements, including landscaping, trash enclosure, parking areas, and Belardo Road and Cahuilla Street improvements. The bond shall be provided prior to issuance of the certificate of occupancy for the restaurant and bar.
34. The landscape plan provided by the applicant shall include low landscape lighting.
35. The sample event contract provided by the Estrella Inn, shall specifically include a provision stating that "no amplified out door music is permitted."
36. A trash enclosure shall be provided for the restaurant and bar by the applicant within 60 days

ENGINEERING DEPARTMENT:

The Engineering Department recommends that if this application is approved, such approval is subject to the following conditions being completed in compliance with City standards and ordinances:

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer.

STREETS

37. Any improvements within the street right-of-way require a City of Palm Springs Encroachment Permit. Work shall be allowed according to Resolution 17950 - Restricting Street Work on Major and Secondary Thoroughfares.
38. Submit street improvement plans prepared by a Registered Civil Engineer to the Engineering Department. The plan(s) shall be approved by the City Engineer prior to issuance of any grading or building permits.

Minimum submittal shall include the following, IF applicable:

- A. Copy of signed Conditions of Approval from Planning Department.
- B. All agreements and improvement plans approved by City Engineer, IF applicable.
- C. Proof of processing dedications of right-of-way, easements, encroachment agreements/licenses, covenants, reimbursement agreements, etc. required by these conditions.

CAHUILLA ROAD SOUTH

39. Construct a 6 inch flat curb and gutter, 20 feet EAST of centerline where required per City of Palm Springs Standard Drawing No. 200 and 206.
40. Construct a modified driveway approach where bay parking stalls are proposed per City of Palm Springs Standard Drawing No. 201 (see Note 5 and Section A-A for depressed top of curb on Std. Dwg. No. 201).
41. Construct minimum 27 foot wide driveway approach in accordance with City of Palm Springs Standard Drawing No. 201 where existing point of access is located.
42. Construct minimum 12 foot wide driveway approach in accordance with City of Palm Springs Standard Drawing No. 201 where existing point of access is located.
43. Construct an 5 foot wide sidewalk behind the curb, approximately 400' in length, from the north edge of the northernmost driveway to the south edge of the southernmost driveway, where not already existing, in accordance with City of Palm Springs Standard Drawing No. 210.
44. Remove and replace existing pavement with a minimum pavement section of 3 inch asphalt concrete pavement over 6 inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal, from edge of proposed gutter to centerline

where required in accordance with City of Palm Springs Standard Drawing No. 315. The pavement section shall be designed, using "R" values, by a licensed Soils Engineer and submitted to the City Engineer for approval.

BELARDO ROAD SOUTH

45. Construct an 5 foot wide sidewalk behind the curb where not already existing (remove the existing asphalt sidewalk and replace) along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210.
46. Remove the depressed curb and gutter located 20 feet WEST of centerline and replace with 6 inch curb and gutter located 20 feet WEST of centerline along the parallel parking spaces, per City of Palm Springs Standard Drawing No. 200.
47. Remove and replace existing pavement with a minimum pavement section of 3 inch asphalt concrete pavement over 6 inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal, from edge of proposed gutter to clean sawcut edge of pavement along the parallel parking spaces in accordance with City of Palm Springs Standard Drawing No. 315. The pavement section shall be designed, using "R" values, by a licensed Soils Engineer and submitted to the City Engineer for approval.

SANITARY SEWER

48. Connect all sanitary facilities to the City sewer system. Lateral shall not be connected at manhole.

GRADING

49. A copy of a Title Report prepared/updated within the past 3 months and copies of record documents shall be submitted to the City Engineer with the first submittal of the Grading Plan.
50. Submit cut and fill quantities to City Engineer to determine if a Grading Plan is required. If required, the Grading Plan shall be prepared by a Registered Professional and submitted to the Engineering Department for plan check. A PM 10 (dust control) Plan shall be submitted to and approved by the Building Division prior to approval of the grading plan. The Grading Plan shall be approved by the City Engineer prior to issuance of any grading or building permits.

Minimum submittal includes the following:

- A. Copy of Planning Department comments regarding the grading plan.
- B. Copy of signed Conditions of Approval from Planning Department.
- C. Copy of Site Plan stamped approved and signed by the Planning Department.
- D. Copy of Title Report prepared/updated within past 3 months.

51. In accordance with City of Palm Springs Municipal Code, Section 8.50.05(c), the developer shall post with the City a cash bond of two thousand dollars (\$2,000.00) per acre for mitigation measures of erosion/blow sand relating to his property and development. The bond amount will be based on the square footage of the disturbed area.
52. The area in which this project is situated is indicative of desert soil conditions found in many areas of Palm Springs. The Engineering Department does not require a soils report. This does not mean that subterranean conditions unknown at this time may not affect construction done on this site.
53. Contact the Building Department to get information regarding the preparation of the PM10 (dust control) Plan requirements.
54. In cooperation with the Riverside County Agricultural Commissioner and the California Department of Food and Agriculture Red Imported Fire Ant Project, applicants for grading permits involving a grading plan and involving the export of soil will be required to present a clearance document from a Department of Food and Agriculture representative in the form of an approved "Notification of Intent To Move Soil From or Within Quarantined Areas of Orange, Riverside, and Los Angeles Counties" (RIFA Form CA-1) or a verbal release from that office prior to the issuance of the City grading permit. The California Department of Food and Agriculture office is located at 73-710 Fred Waring Drive, Palm Desert. (Phone: 760-776-8208)

DRAINAGE

55. The developer shall accept all flows impinging upon his land and conduct these flows to an approved drainage structure.

ON-SITE

56. The minimum pavement section for all on-site streets/parking areas shall be 2-1/2 inch asphalt concrete pavement over 4-inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal. The pavement section shall be designed, using "R" values, determined by a licensed Soils Engineer and submitted with the Fine Grading Plan to the City Engineer for approval.
57. The on-site parking lot shall be constructed in accordance with City of Palm Springs Zoning Ordinance, Section 9306.00.

GENERAL

58. Any utility cuts in the existing off-site pavement made by this development shall receive trench replacement pavement to match existing pavement plus one additional inch. See City of Palm Springs Standard Drawing No. 115. Pavement shall be restored to a smooth rideable surface.
59. All proposed utility lines on/or adjacent to this project shall be undergrounded prior to issuance of a Certificate of Occupancy.

60. All existing utilities shall be shown on the grading/street plans. The existing and proposed service laterals shall be shown from the main line to the property line. The approved original grading/street plans shall be as-built and returned to the City of Palm Springs Engineering Department prior to issuance of the certificate of occupancy.
61. Nothing shall be constructed or planted in the corner cut-off area of any driveway which does or will exceed the height required to maintain an appropriate sight distance per City of Palm Springs Zoning Code 93.02.00 D.
62. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Engineering specifications.

MAP

63. A copy of a Title Report prepared/updated within the past 3 months and copies of record documents shall be submitted to the City Engineer with the first submittal of the Lot Line Adjustment.
64. The existing property (APNs 513-202-005 and 513-212-004, also described as Lots 4, 5, 6, and the south 50 feet of Lot 3 in Block 17 of The Townsite of Palm Springs, records of San Diego County, recorded in Book 9, Page 432 of Maps) shall be combined. The developer shall submit a lot line adjustment prepared by either a Registered Civil Engineer or a Licensed Land Surveyor to the Engineering Department. The Lot Line Adjustment shall be approved prior to issuance of grading or building permits.

TRAFFIC

65. The developer shall provide a minimum of 48 inches of sidewalk clearance around all street furniture, fire hydrants and other above-ground facilities for handicap accessibility. The developer shall provide same through dedication of additional right-of-way and widening of the sidewalk or shall be responsible for the relocation of all existing traffic signal/safety light poles, conduit, pull boxes and all appurtenances located on the CAHUILLA ROAD SOUTH frontage of the subject property.
66. Construction signing, lighting and barricading shall be provided for on all projects as required by City Standards or as directed by the City Engineer. As a minimum, all construction signing, lighting and barricading shall be in accordance with State of California, Department of Transportation, **"MANUAL OF TRAFFIC CONTROLS FOR CONSTRUCTION AND MAINTENANCE WORK ZONES"** dated 1996, or subsequent additions in force at the time of construction.

FIRE DEPARTMENT

67. Building or Complex Gate Locking Devices: Locked gate(s) shall be equipped with a KNOX key switch device or Key box. Contact the fire department at 323-8186 for a KNOX application form. (902.4 CFC)

68. Location of Knox boxes: A Knox box shall be installed at every locked gate. Show location of boxes on plan elevation views. Show requirement in plan notes.
69. Automatic Fire Sprinklers: An approved, automatic Fire Sprinkler System is required in all new public assembly areas (rooms containing 50 or more persons) and new buildings exceeding 3000 square feet in size.
70. Fire Extinguisher Requirements: Provide one 2-A:10-B:C portable fire extinguisher for every 75 feet of floor or grade travel distance for normal hazards. Show proposed extinguisher locations on the plans. (1002.1 CFC) Extinguishers shall be mounted in a visible, accessible location 3 to 5 feet above floor level. Preferred location is in the path of exit travel near an exit door.
71. Fire Alarm System: Fire Alarm System required. Installation shall comply with the requirements of NFPA 72.
72. Trash Container Protection: Trash container space is within 5 feet of the building wall. Provide information on the type and size of trash container to be stored there. If it is a dumpster with a capacity of 1.5 cubic yards or greater, then the enclosure must be protected by an approved automatic fire sprinkler. (1103.2.2 CFC)

Case No. 5.0909

Viceroy

415 S. Belardo Road

May 11, 2005

CONDITIONS OF APPROVAL

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning Services, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

ENGINEERING

GENERAL

1. The following conditions of approval relate to the Cahuilla Road street-scape improvements related to the above mentioned project, as required pursuant to City Council direction to coordinate with the neighborhood following a public hearing on the appeal by the neighborhood of the Planning Commission's approval of the project and the requirements for Cahuilla Road street improvements previously identified.
2. All previous Engineering conditions of approval related to Case No. 5.0909 shall continue to be required, and are incorporated herein by reference.

STREETS

3. Any improvements within the street right-of-way require a City of Palm Springs Encroachment Permit. Work shall be allowed according to Resolution 17950 - Restricting Street Work on Major and Secondary Thoroughfares.
4. Submit street improvement plans prepared by a Registered Civil Engineer to the Engineering Department. The plan(s) shall be approved by the City Engineer prior to issuance of any grading or building permits.

SOUTH CAHUILLA ROAD

5. Vacation of right-of-way is required to facilitate the proposed development application. An application for the right-of-way vacation for the easterly 13 feet of Cahuilla Road shall be submitted to the Engineering Division for separate processing and approval. As required, coordinate final relocation, adjustment or abandonment of all utilities with the respective utility companies, as appropriate, with the Engineering Division. The right-of-way vacation application shall be submitted and approved by the City prior to issuance of certificate of occupancy.

6. Dedicate an easement for sidewalk and pedestrian purposes to the City of Palm Springs across the frontage of the property as necessary to facilitate construction of the sidewalk as shown on the approved site plan.
7. Construct 2 feet wide concrete ribbon gutter with a flowline 18 feet easterly of the centerline of Cahuilla Road along the entire frontage of the property, subject to the approval of the City Engineer. The concrete ribbon gutter shall be constructed with decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.
8. Remove the existing curb, gutter, driveway approach, sidewalk, and bay parking spaces located along the frontage of the property.
9. Construct minimum 24 feet wide driveway approaches at the locations shown on the approved site plan. The driveway approaches shall be constructed of decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.
10. Construct a 6 inch barrier curb along and around all bay parking spaces, in accordance with City of Palm Springs Standard Drawing No. 200. The concrete curb shall be constructed with decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.
11. Construct a minimum 4 feet wide sidewalk along the entire frontage of the property, in the location as shown on the approved site plan. The concrete sidewalk shall be constructed with decorative colored concrete, consistent with the color used throughout the Cahuilla Road street-scape.
12. Remove and replace existing pavement with a minimum pavement section of 2½ inch asphalt concrete pavement over 4 inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction from edge of proposed gutter to clean sawcut edge of pavement in accordance with City of Palm Springs Standard Drawing No. 315. If an alternative pavement section is proposed, the pavement section shall be designed, using "R" values, by a licensed Soils Engineer and submitted to the City Engineer for approval.

MEMORANDUM

DATE: November 1, 2006
To: Planning Commission
FROM: Marcus Fuller, Asst. Dir. of Public Works/Asst. City Engineer
SUBJECT: Case No. 5.0909 CUP; Viceroy (formerly "Estrella Inn")

It is recommended that the Planning Commission schedule a Public Hearing to consider revocation of Conditional Use Permit, Case No. 5.0909, originally approved July 24, 2002, for failure to comply with the requirements of the CUP.

Background

Case 5.0909-CUP is a Type I CUP, allowed construction of a new multi-purpose facility to be used for meetings, receptions, and conferences; and renovation of existing buildings for a new spa, restaurant, and bar. The intent of these improvements was to transform the Estrella Inn (now Viceroy) from a limited service property into a full service resort. The construction of these additional amenities resulted in the need for more on-site parking.

Included with the Planning Commission's approval of Case 5.0909-CUP on July 24, 2002, were requirements to construct street improvements along the property's Belardo Road and Cahuilla Road frontages. The Belardo Road improvements were necessary to remove non-conforming parking spaces located behind the curb and to provide a standard sidewalk along this commercial frontage. The Cahuilla Road improvements were necessary to construct standard driveway approaches and sidewalks to facilitate the new bay parking spaces that would be constructed to meet the additional parking demand. The Planning Commission's approval of the CUP was subject to approval of landscape plans, a parking management program, activities program, and street improvement plans.

On February 26, 2003, the Planning Commission approved the submitted parking management program, with the condition that the applicant submit detailed construction plans for the required Belardo Road and Cahuilla Road street improvements.

On June 25, 2003, the Planning Commission reviewed the applicant's street improvement plans, and approved staff's recommended improvements along the Belardo Road and Cahuilla Road frontages.

On July 8, 2003, Ms. Sheryl Hamlin, on behalf of the Historic Tennis Club Neighborhood Organization and Historic Tennis Club District Hotel Association, filed an appeal with the City Clerk to reverse the Planning Commission's approval of the required Belardo Road and Cahuilla Road street improvements. The basis of the appeal was the appellant's claim that the adjacent neighborhood preferred unimproved streets of a more rural character.

On September 17, 2003, the City Council considered the appeal filed by Ms. Hamlin, and upheld the Planning Commission's approval of the required street improvements on Belardo Road. However, the City Council returned the matter of the Cahuilla Road street improvements to the Planning Commission for further review.

As the matter of the accessory uses authorized by Case 5.0909-CUP were not subject to the appeal, the applicant commenced construction of the new multi-purpose room, and renovations to facilitate the spa, restaurant and bar. These facilities were completed and opened for use as part of the hotel.

Over the next year, staff attempted to pursue resolution of the Cahuilla Road street improvements with the applicant, and ultimately obtained the required street improvement plans for re-study by the Planning Commission in November 2004. Subsequently, neighborhood meetings were held to review the revised street improvement plans.

On May 11, 2005, the Planning Commission reviewed and approved the final concept plans for the required Cahuilla Road street improvements. No appeal was filed, and the matter was closed as final.

Findings

1. The Viceroy (formerly Estrella Inn) has been operating accessory uses, including: new multi-purpose room for conferences and meetings, spa, restaurant, and bar. These new accessory uses require construction of new parking, which has not been completed.
2. The disposition of required street improvements on Belardo Road was determined by the City Council's denial of Ms. Hamlin's appeal on September 17, 2003.
3. The disposition of required street improvements on Cahuilla Road was determined by the Planning Commission's approval of revised concept plans on May 11, 2005.
4. A first submittal of street improvement plans prepared by The Keith Companies (now Stantec) for Belardo Road and Cahuilla Road was submitted to the City Engineer for review on October 3, 2005. Subsequent submittals were received over the next nine months. The last submittal was returned to Stantec on August 22, 2006.
5. City staff have attempted to contact the applicant, but have had no success. Project Managers at The Kor Group (owner/operator of the hotel) have changed. Phone call and e-mail messages have not been answered.
6. City staff contacted Stantec to determine the status of the street improvement plans, and were advised that Stantec had not been paid for engineering services rendered, and that Stantec has had little or no contact with the Kor Group.
7. Many conditions of approval associated with Case 5.0909-CUP, including construction of improvements necessary to provide required on-site parking, remain unfulfilled.



Planning Commission Staff Report

Date: ~~May 24, 2006~~ *November 8, 2006*

Case No.: Case 5.0909 Conditional Use Permit

Application Type: Recommendation to City Council to Revoke a Conditional Use Permit – Setting a Public Hearing

Location: 415 S. Belardo Road

Applicant: Initiated by Staff; Original CUP Applicant: Brad Korzen

Zone: R-3

General Plan: H-43 / 21 – High Density Residential

APN: 513-212-004

From: Craig A. Ewing, AICP, Director of Planning Services

SUMMARY

In accordance with Section 94.02.00.1, the City Council may revoke an existing Conditional Use Permit if it finds that the use permitted by the CUP is not being conducted in compliance with the conditions of approval.¹ Staff believes that such conditions may exist at the Viceroy Hotel at 415 S. Belardo Road. The request to the Commission is to set a hearing date at which it can consider a recommendation to the City Council on the matter.

A memo to the Commission has been prepared by the Assistant Director of Public Works describing the circumstances behind staff's recommendation (see attachment). The original staff report and resolution granting approval of the Conditional Use Permit are also attached, including the associated conditions of approval.

¹ 94.02.00.1.

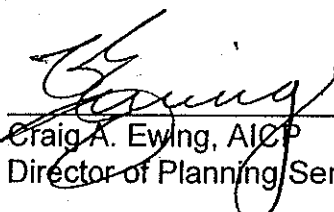
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Revocation or Voiding of Conditional Use Permit.

The council, with or without a recommendation from the planning commission, may, after notice and public hearing, revoke any conditional use permit for noncompliance with any of the conditions set forth in granting the permit.

NOTIFICATION

The staff report and agenda have been forwarded to the applicant. If the Commission directs staff to set a future public hearing, notice will be mailed to all property owners within 400 feet of the subject property in advance of the hearing.



Craig A. Ewing, AICP
Director of Planning Services

ATTACHMENTS

1. Memorandum from Assistant Director of Public Works / Assistant City Engineer (November 1, 2006)
2. CUP 5.0909 Resolution and Conditions of Approval
3. CUP 5.0909 Staff Report (July 24, 2002)
4. Site Plan

Vice Chair Marantz and Commissioner Caffery re-entered the council chamber at 1:58 p.m.

5. An appeal by Century Homes, Inc., of Staff Determination on Amendments to Planned Developments. (Project Planner: Craig A. Ewing, Director of Planning Services)

Craig A. Ewing provided background information as outlined in the staff report dated November 8, 2006.

The Commission discussed in detail the planning process for minor PDD amendments and administrative minor modifications.

Tom Hill, appellant, provided additional information.

M/S/C (Hutcheson/Vice Chair Hochanadel, 6-0, 1 absent/Cohen) To deny, with direction to planning staff to proceed with the requirement for minor amendments to ~~Planned Developments be reviewed by the Planning Commission.~~

6. Case 5.0909 CUP - Setting a Public Hearing for a recommendation to revoke a Conditional Use Permit at the Viceroy (former Estrella Inn) located at 415 South Belardo Road, Zone R-3, Section 15. (Project Planner: Craig A. Ewing, Director of Planning Services)

Craig A. Ewing provided background information as outlined in the staff report dated November 8, 2006.

M/S/C (Caffery/Ringlein, 6-0, 1 absent/Cohen) To set a noticed Public Hearing to consider revocation of the Conditional Use Permit.

~~PUBLIC HEARINGS:~~

7. Case 5.1110 / PD 327 - An application by Cioffi Architects for Nichols Properties to develop a 2-story mixed-use commercial / residential building with covered parking and associated landscaping on an approximate 0.60-acre parcel located at 135 West Hermosa Place, Zone C-1 / R-2, Section 10, APN: 505-263-006. (Project Planner: Diane Bullock, Associate Planner) (Continued from the meeting of October 25, 2006.)



City of Palm Springs

Department of Planning Services

3200 E. Tahquitz Canyon Way • Palm Springs, California 92262
Tel: (760) 323-8245 • Fax: (760) 322-8360 • Web: www.palmsprings-ca.gov

November 24, 2008

Kara Altice, General Manager
Viceroy Palm Springs
415 S. Belardo Rd.
Palm Springs, CA 92262

RE: Required Improvements for Viceroy Hotel, 415 S. Belardo Road

Dear Ms. Altice,

In 2003, the Viceroy Hotel was granted a Conditional Use Permit by the City of Palm Springs to operate the hotel, subject to certain conditions of approval (see attachments). Among these conditions are several requirements related to street improvements along the Belardo Road and Cahuilla Road frontages of the property. As of this date, these improvements remain incomplete, and the City needs your immediate attention to this matter. For some background information, please note the following:

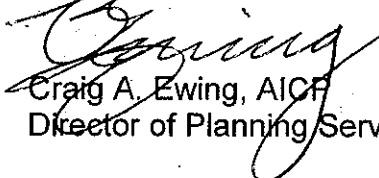
- November 8, 2006 Planning Commission approved a recommendation to City Council to revoke a conditional use permit. After this date representatives from Viceroy met with City and wanted the opportunity to complete the required improvements.
- July 20, 2007 Street Improvement Plans were completed and approved. Viceroy representatives were notified that plans were approved and encroachment permits could be issued.
- January 4, 2008 Viceroy Representative contacted City to acquire permits for kitchen expansion; they were informed that no additional permits will be issued by City until required Street Improvements were completed.
- January 22, 2008 Contractor for the Viceroy project contacted the City and wanted to pull permits for a kitchen expansion and, again, they were informed about the required street improvements.
- January 31, 2008 A Viceroy representative met with Assistant City Engineer, Engineering Assistant and Director of Planning to discuss the lack of progress and also to discuss alternatives to the required Street Improvement and landscaping requirements. They were given direction to meet with involved neighborhood groups to discuss options and return to City with proposed changes.

No progress has been made on the required Improvements since January of this year. Based on the lack of progress on the required improvements, the City will schedule a hearing within 45 days of the date of this letter to consider revocation of the Viceroy Hotel's Conditional Use Permit (CUP). If the CUP is revoked the Viceroy Hotel will be required to cease operations until a new Conditional Use Permit is approved by the City.

Please contact the City's Department of Public Works to obtain the required encroachment permits immediately. If you have any questions, feel free to contact Mr. Rick Minjares, of the Public Works Department at 323-8253 or me at 323-8245.

Your prompt attention to this matter will avoid further enforcement action against you.

Sincerely,


Craig A. Ewing, AICP
Director of Planning Services

Attachment

Case No. 5.0909 Conditions of Approval

cc: Douglas Holland, City Attorney
Dave Barakian, Director of Public Works
Rick Minjares, Engineering Assistant

VICEROY

PALM SPRINGS

Proposed Street Improvement Plan for Belardo and Cahuilla Roads

The street improvements required to be completed by Casa Real Estate Limited Partnership, a Delaware limited partnership ("Casa") by the City of Palm Springs has been broken down below. Casa's proposed plan caused the street improvements to be completed in five (5) phases. The proposed timeframe and phases are as follows:

Phase 1: La Serena Aesthetic Site Improvement

Begin work within one (1) week of Casa's receipt of written confirmation from HTCNO Board that it will support Casa at the April 8, 2009 Palm Spring's Planning Commission hearing to revoke Casa's CUP

Scope of work shall consist of:

- Reinstall loose roof tiles on all buildings
- Trim existing foliage and clean-up property (interior and exterior)
- Install new fencing around the property
- Install irrigation and foliage around the fence line of the property
- Level and place white rock on adjacent ground between pavement and wall
- Maintain integrity of the La Serena property and surrounding area

Viceroy Palm Springs Street Improvement Plan Pursuant to the CUP

Phase 2: Scope of work to be completed between June -- Dec 2009:

- Level remainder of Cahuilla road to prepare for asphalt installation
- Install white pebble rock or similar to top of dirt grade for entire property line on Cahuilla until asphalt installation
- Submit to Planning Commission for review and approval of revised Cahuilla conceptual plans as previously approved by HTCNO Board
- Preparation an submittal of Cahuilla construction drawings

Phase 3: Phase 3 to commence when and only when Viceroy Palm Springs reaches revenue per average room (REVPAR) of \$250

Scope of work to be completed:

- Begin Belardo project pursuant to revised street improvement plans submitted to and approved by the City
- Complete proposed 5foot sidewalk located in front of the South side of the Viceroy Palm Springs along Belardo

Phase 4:

Implementation of Phase 4 to commence upon completion of Phase 3 so long as Viceroy Palm Springs per average room (REVPAR) remains at \$250 after completion of Phase 3 improvements.

Scope of work to be completed:

- Complete proposed 5foot sidewalk on the North side of Viceroy Palm Springs
- Belardo Road Street improvements to be completed at this time pursuant to City Approved plans

Phase 5:

Implementation of Phase 5 to commence upon completion of Phase 4 so long as Viceroy Palm Springs per average room (REVPAR) remains at \$250 after completion of Phase 4 improvements.

Scope of work to be completed:

- Completion of Cahuilla parking lots, sidewalks and landscape improvements pursuant to revised street improvement plans
- Reminder of Cahuilla Street improvements completed pursuant to revised street improvement plans

VICEROY
PALM SPRINGS

Date: April 2, 2009

To: Mr. Craig Ewing, Planning Director

RE: Changes to Approved Street Improvement Plan for Cahuilla Roads

Dear Craig,

Attached is a copy of the Belardo and Cahuilla Street improvements as approved by the City of Palm Spring. Viceroy Palm Springs (VPS) will proceed with the plans for the Belardo street improvements as approved by the City. However, VPS requests flexibility to revise the plans for Cahuilla as described below due to budgetary concerns.

(Revision 1)

Approved plans provide a meandering granite sidewalk. VPS proposes straight colored concrete sidewalks on the Cahuilla side of the property.

(Revision 2)

Approved plans provide mature landscaping. VPS proposes to install new mature landscaping along Cahuilla.

These revisions remain conceptual and must be engineered. Accordingly, VPS proposes to engineer these changes in the near future, and implement them pursuant to the previously provided phasing plan (attached for your convenience). These revisions, however, are not anticipated to impact the Cahuilla Road conditions of approval dated July 25, 2003 (Nos. 39 – 44)

A total of 9 parking spaces exist along Cahuilla and 6 along Belardo (this does not include non marked spots that are currently used). Existing parking will not be impacted by the ongoing construction process (except for the dates when these areas are repaved). After implementation of the Cahuilla Street improvements, a total of 15 striped spaces will be added for a total of 24. The Belardo street improvements do not include adding additional parking spaces.

VPS has discussed these revisions with the Historical Tennis Neighborhood Association (HTNA). HTNA does not object to these revisions. Upon approval of these proposed revisions by the City of Palm Springs Planning Commission, professional blue prints will be produced and submitted for final approval.

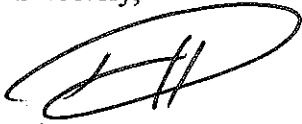
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APR 03 2009

PLANNING SERVICES
DEPARTMENT

Thank you very much for your consideration and I look forward to working closely with your department to ensure the completion of this project.

Sincerely,

A handwritten signature in black ink, appearing to be 'DH', enclosed within a large, loopy oval shape.

Diego Heredia
General Manager
Viceroy Palm Springs

cc:

Kara Altice-Montes
Jason Morgan
Michael Gonzales