

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: January 25, 2006
Department Name: Planning & Development
Department No.: 053
Agenda Date: February 7, 2006
Placement: Departmental
Estimate Time: 1.5 hours
Continued Item: NO
If Yes, date from:
Document File Name: G:\GROUP\Permitting\Case Files\APL\2000s\04 cases\04APL-00000-00030\Board letter.DOC

TO: Board of Supervisors

FROM: Dianne Meester, Assistant Director
Planning and Development

STAFF CONTACT: Alice Daly, Planner (x2059)
June Pujo, Supervising Planner (x2056)

SUBJECT: Hearing on the Thorson Appeal of the Planning Commission Denial of the Shadow Hills Archeological Easement Recorded Map and Development Plan Modifications to Allow Archaeological Testing, under case numbers 02RMM-00000-00011 and 04DVP-00000-000030 [Appeal Case No. 05APL-00000-00031]

Recommendation(s):

That the Board of Supervisors deny the appeal of the Planning Commission denial of the Shadow Hills Archeological Easement Recorded Map and Development Plan Modifications to allow new archaeological testing.

The Board of Supervisors' action should include the following:

1. Adopt the required findings for denial of the project specified in Attachment A of the staff report dated September 28, 2005, including CEQA findings.
2. Accept the exemption pursuant to CEQA Guidelines Sec. 15270 included as Attachment B of the staff report dated September 28, 2005.
3. **Deny** the appeal, upholding the decision of the Planning Commission and deny the request for modification to conditions of Recorded Map 02RMM-00000-00011 and Development Plan 04DVP-00000-00003 to allow new archaeological testing, as set forth in the Planning Commission Action Letter dated November 14, 2005.

Refer back to staff if the Board takes other than the recommended action for appropriate findings and conditions.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

Issue Summary

The appeal to your Board has a single-issue archeological focus: is there a change of circumstances that would justify allowing additional testing and ground disturbance within the archeological easement on the Shadow Hills site. The recorded easement protects a significant archeological site. Several new opinions from consultants have been made available by the applicant since the time of the easement dedication. The applicant asserts that these opinions justify revised project conditions that would allow new testing within the dedicated archeological easement area that would be conducted for the purpose of bringing forward a request that the easement area could be reduced. In order to approve the condition revisions, the Board of Supervisors must find the proposal to be consistent with Comprehensive Plan policies, including Goleta Community Plan policies that are intended to conserve and protect archeological resources. The evidence must also support a finding of a change in circumstances under which the original Board of Supervisors decision was made.

The Planning Commission found that changes to the existing recorded easement would be inconsistent with the intent of every policy requiring protection of cultural resources, as detailed in Section 6.2 of the Planning Commission Staff Report dated September 28, 2005, and would also not be in compliance with Article III ordinance Section 35-211, as detailed in Section 6.3 of the Staff Report (see Attachment B). Review of the case records, available data and of the conclusions of Applied Earthwork's report (included in the Staff Report) found no support for altering this easement. The peer review of all consultants' opinions by Applied Earthworks found no deficiency in the data by which the Board made their original determination in 1986.

Background

In January 1986, the Board of Supervisors approved Tract Map TM 13,711 for the Shadow Hills condominium/townhouse project on what had previously been the site of the San Marcos golf course. The now-developed 29.5 acre Shadow Hills site includes 51 residential units, 23 acres of common open space and a 3.28 acre archeological site known as SBA-1820. The entire archeological site is significant by CEQA standards and the entire area contains significant data. Consistent with Comprehensive Plan policies that are protective of significant archeological resources, the County Board of Supervisors approved the 51-unit condominium project and required recordation of an Archeological Easement Grant Deed of Development Rights that prohibits ground disturbance or development in the 1.01 acre knoll area within SBA-1820 that was determined to have the highest density of cultural remains.

Appellant Hugh Thorson wants to conduct further excavation and testing to support his request that the easement area be re-drawn and reduced in support of a future proposal to build 2 additional dwelling units on site. In 1987, after recordation and prior to construction, the Board of Supervisors denied a similar request to reduce the easement (see Attachment B, Planning Commission Staff Report, which includes the Project Chronology).

There is now a 20-year history of review and research documentation that discusses the age, extent and significance of the 3.28-acre archeological site known as SBA-1820 that exists on the elevated knoll area of the 51-unit Shadow Hills condominium site. Site excavations, reports and memos were prepared by contract archeologists and geologists prior to the original Planning Commission and Board of Supervisors decisions on the Shadow Hills condominium project and the easement recordation (under 80-EIR-46, TM 13,711 and 86-DP-45). Two new reviews of existing data have been made available by the applicant since the 1987 easement recordation: an August 2002 geologic report by engineering geologist Rick Hoffman and an April 2003 letter opinion from contract archeologist Larry Spanne. Mr. Thorson contends that disagreements among the archaeologists and geologists who previously worked on the site provide evidence that the easement could be reduced in size without adversely impacting archaeological resources.

To evaluate Mr. Thorson's current request, the County retained archeological consultants Applied Earthworks, Inc. in 2005 to (1) review and summarize all existing data and evaluations of SBA-1820 and (2) assess the key archeological issues (age of the site, integrity of the site and site boundary). The information that was not in the record at the time of the Board decision in 1987 on the easement delineation, specifically the 2002 geology report by Hoffman and Spanne's 2003 archeological review letter, were included in the review authored by archeologist Joyce Gerber of Applied Earthworks (see Attachment B, the Planning Commission Staff Report, for the full text of Gerber's review).

Gerber's conclusions were organized into discussions of (1) data potential and (2) site integrity, in order to fully address the significance of the site within the easement area. Gerber concludes that the testing done to date is sufficient to determine site significance and the nature and location of deposits.

On November 9, 2005, the Planning Commission denied the Shadow Hills Archeological Easement Recorded Map and Development Plan Modifications to allow new archaeological testing, under case numbers 02RMM-00000-00011 and 04DVP-00000-000030, based on the inability to make the findings for approval as set forth in the Planning Commission Action Letter dated November 14, 2005 (see Attachment A), the requirements of Article III of Chapter 35 of the County Code, and the project's inconsistency with the policies and development standards of the Comprehensive Plan, including the Goleta Community Plan.

On November 18, 2005, Susan Petrovich, on behalf of applicant Hugh Thorson, submitted an appeal of the Planning Commission denial (see Attachment C).

Appellant Issues

The appeal letter states that the applicant agreed to a conservatively large archeological easement area in 1987, rather than risk extending the time frame for approval of his condominium project by collecting additional data in support of a smaller easement area. The applicant believes that because the consultants who tested and evaluated the site for 80-EIR-46, TM 13,711 and 86-DP-45 offered a range of conclusions on artifact distribution and site integrity, the Planning Commission and the Board of Supervisors did not have adequate data by which to determine the required easement area.

All materials attached to the applicant's Board appeal were reviewed by staff and by the Planning Commission and were part of the public record for the November 9, 2005 Planning Commission denial of the applicant's request. Based upon review of the appeal letter submitted by Ms. Petrovich, staff offers the following discussions and responses to the concerns of the applicant:

Adequacy of Existing Data

Archeological consultant Joyce Gerber's 2005 report (see Attachment B) concludes that there is no deficiency in the data by which the Board made their original determination on the archeological easement area be held in public trust as open space. Records of the original Shadow Hills hearings confirm that there was considerable deliberation and specific discussion as to the exact delineation of the easement area.

All of the experts who have performed field work at the site agree that SBA-1820 is significant. Both the Inland Zoning Ordinance and the Goleta Community Plan archeological policies apply specifically to *significant* sites or resources. While consultants Van Horn¹ and Wilcoxon differ on the exact locations of the highest concentrations of artifacts, both consultants' excavations recovered substantial amounts of cultural remains throughout the area of the recorded easement. While differing on specific points, the work of all the consultants is adequate to determine that the data potential for the entire easement area is significant.

Resource Protection

In her appeal letter to your Board, Ms. Petrovich asserts that the original easement area may have been an excessive project-related exaction on the part of the County. The action by the Planning Commission and the Board required that the critical portion of the archeological site known as SBA-1820 be deeded to the County and to be left as undisturbed open space. Substantial evidence supported the delineation of the area and its significance. Policy provides that significant cultural, archaeological, and historical resources shall be protected and preserved to the maximum extent feasible (see Section 6.2 of the staff report included with this letter as Attachment B for a full policy discussion).

¹ Both Van Horn and Wilcoxon were on the County list of approved archeological consultants. Dr. Van Horn's specific area of expertise was Greek and Roman archeology, while Wilcoxon, David Stone, and Dr. Michael Glassow (Stone and Glassow concur with Wilcoxon's findings) are all specialists in Chumash archeology.

In general terms, CEQA and the County policies guiding cultural resource protection seek to avoid, rather than mitigate, impacts on significant archaeological sites, and County policies aim to protect entire archaeological sites and their environs rather than portions of sites.

Because the project site is already developed with 51 condominium units, and because the original action by the Planning Commission and the Board required that only a 1.01-acre portion of the 3.28-acre archeological site was to be deeded to the County as an Archeological Easement to be left as undisturbed open space, the owner was left with significant use of his land. The original discretionary decision that required the easement only in the area determined to be the most significant archeological area with the highest densities of cultural remains was a reasonable exercise of the police power. This easement was granted to the County in perpetuity for public benefit.

Any archeological excavation is considered potentially destructive and damaging to the resources on a site of significance. Given the peer-reviewed conclusion that existing site data recovered during earlier excavations is sufficient for drawing conclusions about the extent and significance of the resource area, and that no new technologies now available would have altered the conclusions that can be drawn from the existing data, staff could not recommend and the Planning Commission did not find that further testing should be approved.

CEQA

Because staff recommended that the Planning Commission could not approve or make the required findings for the November 9, 2005 request for new archeological testing, CEQA Section 15270, the categorical exemption for projects that cannot be approved, is the appropriate CEQA action.

If new site testing were approved, the proper level of CEQA review would be dependent upon the scope of the excavation work program. Although the applicant submitted information on possible approaches to further testing, no detailed draft scope of work was submitted or peer-reviewed.

Researchers agree that the site meets the threshold of “significance” under CEQA criteria. Contract archeologist Larry Wilcoxon and geologist Tom Rockwell evaluated the significance of the project site based on the criteria in Appendix K of CEQA for the original Shadow Hills development proposal (under 80-EIR-46, TM 13,711 and 86-DP-45). Wilcoxon concluded that archeological area SBA-1820 is important to scientific research because it contains a diverse assemblage of well-preserved artifacts having the potential to yield important information about one of the earliest prehistoric societies in the Santa Barbara region. Wilcoxon concluded that the site possesses a “remarkable degree of integrity” and retains its scientific value. He also stated—per CEQA evaluation criteria—that the site could be important to the general public through its educational value. A change to the existing recorded easement that offers protection to a significant site would be inconsistent with the intent of all the policies that require protection of cultural resources. Any site excavation and testing could impact a resource determined to be significant under CEQA, and the appropriateness level of additional CEQA review pursuant to

CEQA guidelines has yet to be determined within the context of a specific excavation and testing plan.

Process

If the applicant were to ultimately obtain two additional condominium units within the deeded archeological easement area, a number of review processes and approvals would be required.

The applicant funded a consultant peer review of all archaeological/geological documentation. The consultant's conclusions formed the basis of the staff recommendation to the Planning Commission, and on November 9, 2005, the Planning Commission moved to deny the applicant's request for revisions to conditions.

If the Board of Supervisors should reverse the Planning Commission denial, the Board must also notice and hold a separate public hearing to amend the archeological easement deed language to allow additional archaeological assessment. Prior to these actions, appropriate environmental review pursuant to CEQA guidelines must be determined. The Board of Supervisors would then consider a reduction to the recorded archeological easement. After approval of Map Modification and Development Plan revisions and the recordation of a revised easement area, follow-up Land Use Permits and Building Permits would be required.

Mandates and Service Levels:

Section 35-327.3 of Article III of Chapter 35 of the County Code provides that the decisions of the Planning Commission may be appealed to the Board of Supervisors.

Pursuant to Government Code Sections 65355 and 65090, a notice shall be published in at least one newspaper of general circulation.

Pursuant to Government Code Section 65091, mailed notice required to property owners within 300 feet of the project, including the real property owners, project applicant and local agencies expected to provide essential services, shall be done at least 10 days prior to the hearing.

Fiscal and Facilities Impacts:

As this is an applicant appeal to the Board, an appeal application flat fee of \$2,000 was required per the Planning & Development fee schedule in effect at the time of filing (Resolution No. 04-060, adopted by the Board of Supervisors on March 15, 2004). Therefore, any costs for processing this appeal over the amount of \$2,000 are borne by the Department. These funds are budgeted in the Permitting and Compliance program of the Development Review South division on page D-294 of the adopted 05/06 fiscal year budget.

Special Instructions:

Clerk of the Board shall forward a copy of the Minute Order to Planning and Development Hearing Support Section, Attention Cintia Mendoza.

Concurrence: County Counsel

Attachments:

- A: Planning Commission Action Letter dated November 14, 2005, including Findings and Project Conditions of Approval
- B: Staff Report dated September 28, 2005, which includes:
 - Findings
 - CEQA Exemption [projects which cannot be approved]
 - Shadow Hills Chronology
 - Planning Commission letters/ exhibits
 - Site plans
- C. Appeal Request received November 18, 2005.