



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

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

Department Name: Planning and Development
Department No.: 053
For Agenda Of: Set Hearing on 10/18/16 for 11/8/16
Placement: Departmental
Estimated Time: 1 hour on 11/8/16
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Glenn Russell, Ph.D. Director, Planning and Development
Director(s) (805) 568-2085
Contact Info: Jeff Wilson, Deputy Director, Development Review
(805) 568-2518

SUBJECT: Myers Bridge Appeal (16APL-00000-00021) of the County Planning Commission's Denial of Case No. 16LUP-00000-00109, First Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On October 18, 2016, set a hearing for November 8, 2016 to consider Case No. 16APL-00000-00021, an appeal filed by Barton and Victoria Myers of the County Planning Commission's deemed denial of the Myers Bridge project (Case Nos. 16LUP-00000-00109).

On November 8, 2016, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 16APL-00000-00021;
- b) Make the required findings for denial of the project (Case No. 16LUP-00000-00109) in Attachment 1 of this board letter, including CEQA findings;
- c) Determine the denial of the project is exempt from CEQA pursuant to CEQA Guidelines Section 15270, included as Attachment 2; and
- d) Deny *de novo* the project, Case No. 16LUP-00000-00109.

Alternatively, refer back to staff if your Board takes other than the recommended action for appropriate findings and conditions.

Summary Text:

The project (Case No. 16LUP-00000-00109) is for the construction of a new approximately 10'-0" wide by 60'-0" long bridge spanning Toro Canyon Creek supported by two precast concrete abutments, permitting an existing unpermitted approximately 10'-0" wide and 450 foot long road through designated Environmentally Sensitive Habitat, and improvements to the road (paving with compacted shale, installing a stone lined road gutter, and constructing a 3'-0" high stone wall at various locations along the road) to provide secondary access to an existing residence and residential second unit. An unknown number of native trees (e.g. oaks and sycamores) and other native vegetation were removed within approximately 0.37 acres of designated Environmentally Sensitive Habitat associated with the riparian corridor of Toro Canyon Creek during construction of the existing unpermitted access road. One additional sycamore tree is proposed for removal. The parcel will continue to be served by the Montecito Water District and a private well, a private septic system, and the Carpinteria/Summerland Fire Protection District. Primary access would continue to be provided off of Toro Canyon Road via an access easement across 925 Toro Canyon Road (APN 155-240-020) and 930 Toro Canyon Road (APN 155-240-021).

Background:

The subject property is a 38.68-acre parcel zoned MT-TORO-100 and shown as Assessor's Parcel Number 155-020-004, located at 949 Toro Canyon Road. The subject property is currently developed with a single family dwelling, residential second unit, detached garage, ground mounted solar panels, and orchards. Access to the property owners' residence is from Toro Canyon Road via an access easement across the properties located at 925 Toro Canyon Road (APN 155-240-020) and 930 Toro Canyon Road (APN 155-240-021). Planning & Development staff received reports that at some point around May 2015, the property owners began construction of a secondary access road on their property to Toro Canyon Road through designated and mapped Environmentally Sensitive Habitat without obtaining the necessary zoning and grading permits. As a result, the County opened a building violation case (due to more than 50 cubic yards of unpermitted grading) and a zoning violation case in June 2015. To date, these cases are still active violations. The grading, tree and native vegetation removal, and general disturbance to riparian vegetation also requires approval from the California Department of Fish and Wildlife, Central Coast Regional Water Quality Control Board, and potentially the Army Corps of Engineers due to its location within a creek. Based on communication with these agencies, the owners also did not submit for permits or consult with any of these departments or agencies prior to constructing the secondary access road.

On September 23, 2015, the owners submitted an application for a Land Use Permit (Case No. 15LUP-00000-00380) to remove large boulders they had placed within the creek on their property and to install erosion control measures along the unpermitted secondary access road that had been created. During the Land Use Permit intake meeting, staff reiterated to the applicant that Planning and Development would not be able to approve the Land Use Permit without a restoration component to restore the site to pre-violation conditions, as required to address the grading and building violations. Due to imminent concerns that the large boulders in the creek channel would cause flooding hazards in the event of a storm, Planning and Development issued an Emergency Permit (Case No. 15EMP-00000-00012) on January 11, 2016 to authorize and expedite removal of the boulders. The boulders were removed in January 2016. Per Section 35-171.5.3 of the County LUDC, the Land Use Permit is still required as a follow-up to the Emergency permit. To date, the appellants have not submitted any restoration plan. On March 15, 2016, the owners submitted a Land Use Permit application to permit the secondary access

road and associated bridge (Case No. 16LUP-00000-00109) on their property through designated Environmentally Sensitive Habitat. The owners claim that secondary access is required for health and safety issues in the event of a wildfire, and is also required to support agricultural activities on the property. However, officials from the Carpinteria/Summerland Fire Protection District and the Santa Barbara County Fire Department have confirmed with staff that a secondary access road is not required and adequate access requirements are already met. The appellants have also not provided any substantial evidence that supports their contention that the secondary access road is necessary to support agricultural uses on the subject property, nor any information that indicates the existing legal access is insufficient to support their agricultural operation.

The Director of Planning & Development denied the Land Use Permit on April 13, 2016. The denial was based on the conclusion that a secondary access road and associated bridge are not necessary to provide adequate access to the subject property, and that there is therefore no justification to allow construction of a bridge and road in designated Environmentally Sensitive Habitat in conflict with numerous policies and development standards in the Toro Canyon Community Plan that serve to protect and enhance Environmentally Sensitive Habitat. For a more detailed discussion of these policies, see Section 6.3 of the County Planning Commission staff report included as Attachment 5. A copy of the Directors decision denying the project is included as Attachment 3. The owners appealed this Director denial to the County Planning Commission, and the County Planning Commission voted to deny their appeal on August 10, 2016 on a 2-2 vote (with one recusal), which is deemed a denial under the Santa Barbara County Planning Commission Procedures Manual. Subsequently, the owners appealed the Planning Commission's deemed denial to the Board of Supervisors, which is the subject of this Board letter. For a more detailed discussion on project background, see Section 5.3 of the County Planning Commission staff report included as Attachment 5.

Appeal Issues

The appellants, property owners Barton and Victoria Myers, submitted a list of issues with their appeal application (included as Attachment 4) that identifies and explains their grounds for disputing the County Planning Commission's denial of their application for a new bridge and secondary access road on their property and their assertion that the Planning Commission's denial is not supported by evidence in the record. Those issues have been included below and are followed by staff's response.

Appeal Issue #1: Claim of Secondary Access Road Benefits: The appellants contend that the Planning Commission's denial of the project is not supported by evidence in the record and that they believe the project has been designed to minimize any possible impacts to environmental resources, and that the project will enhance environmental resources in the area while addressing fire, life, health, and safety issues for the appellants and fire fighting personnel.

Staff Response: The property owners began construction of the secondary access road located entirely within designated Environmentally Sensitive Habitat (shown as Figure 1 in Attachment 9) at some point around May 2015 without any consultation or review by Planning & Development, California Department of Fish and Wildlife, Central Coast Regional Water Quality Control Board, Army Corps of Engineers, or the Summerland/Carpinteria Fire Protection District, all of whom have jurisdiction over such development. In addition, the appellants' biologist and arborist did not visit the site until December 2015 according to the biological assessment and arborist report, such that the assessments of existing

conditions and recommendations prepared by qualified individuals to minimize environmental impacts did not take place until over 6 months after the majority of environmental impacts already occurred. Furthermore, neither of these reports indicate that the project will enhance environmental or biological resources in the area, as indicated by the appellants. Therefore, the appellants' claims that the project has been designed to minimize any possible impacts to environmental resources and that the project will enhance environmental resources in the area are not supported by any evidence, as discussed in more detail under Appeal Issue #10.

The Central Coast Regional Water Quality Control Board (RWQCB) and California Department of Fish and Wildlife (CDFW) have determined the proposed project will not enhance environmental resources since they are requiring restoration. The RWQCB issued a Notice of Violation on May 18, 2016 (included as Attachment 7) for failure to obtain a Clean Water Act Section 401 Water Quality Certification prior to excavation, grading, and discharge of fill into Toro Canyon Creek. The RWQCB is also requiring that the site be restored to pre-violation conditions to address this violation. The CDFW previously issued an after-the-fact Streambed Alteration Agreement for the removal of boulders placed in the creek by the appellants and for other impacts caused by the unpermitted construction of the road, but the agreement also required mitigation to offset those impacts. The appellants later submitted a notification of their intent to build a bridge, but CDFW declined to review the proposed bridge and suspended the Streambed Alteration Agreement on May 9, 2016 since the appellants have not fulfilled the requirement in the original Streambed Alteration Agreement to submit a mitigation plan or fully mitigate the impacts from the unpermitted grading. A copy of the CDFW Suspension of Notification of the Streambed Alteration Agreement is included as Attachment 8.

After the fire access issue was first raised by the applicant in December 2015 to justify the secondary access, staff began coordination with local fire officials to determine if existing access was inadequate. On March 3, 2016, staff met with Fred Tan from the Santa Barbara County Fire Department to discuss fire access issues at the site. During the meeting, Mr. Tan notified staff that Ed Foster, Fire Marshal for the Carpinteria/Summerland Fire Protection District, and Steve Oaks, Fire Marshal for the Santa Barbara County Fire Department, had both conducted site visits and concluded that a secondary access road is not necessary. Furthermore, in an email from Ed Foster to staff on April 12, 2016, Mr. Foster states that *the Fire Code does not mandate a secondary means of access or egress for this property and the Fire District does not mandate a secondary means of access or egress*. Mr. Foster also noted that any new bridge or driveway must meet the requirements of all Local, County, and State requirements (i.e. consistency with County policies and ordinance requirements). As discussed in Sections 6.3 and 6.4 of the County Planning Commission staff report (included as Attachment 5), the proposed project is not consistent with applicable Environmentally Sensitive Habitat policies and development standards in the Toro Canyon Community Plan and County Land Use and Development Code.

The proposed secondary access is also in close proximity to the existing access and its route would not differ substantially from the existing access. The proposed new access road would terminate at Toro Canyon Road approximately 350 feet north (up canyon) of where the existing access road terminates at Toro Canyon Road (shown as Figure 2 in Attachment 9). Mr. Oaks confirmed via email on March 3, 2016 that fire officials would access the residence from the main driveway, not the proposed access road, in the event of a fire. A copy of the email from Steve Oaks is included as Attachment 10. Ed Foster also confirmed that the secondary road and bridge would only be 10 feet wide and not meet the minimum fire access road width requirement of 12 feet; therefore, the proposed road and bridge would not meet minimum width and safety requirements for fire officials to utilize it in the event of an

emergency. Lastly, the Carpinteria/Summerland Fire Protection District concluded that fire access was adequate at the time the single family residence and accessory structures were permitted and remains adequate today. Staff has not received any direction from the Carpinteria/Summerland Fire Protection District and the Santa Barbara County Fire Department that there are compelling health and safety issues to require a secondary means of ingress/egress.

Appeal Issue #2: Claim of Improper Interpretation of Development Standard Fire-TC-2.4. The appellants contend that the Planning Commission's denial of the project is not supported by evidence in the record in regards to the interpretation of Toro Canyon Community Plan Development Standard DevStd Fire-TC-2.4, which states that *two routes of ingress and egress shall be required for discretionary permits for subdivisions involving five or more lots to provide emergency access unless the applicable fire district waives/modifies the requirement and documents finding(s) for the waiver/modification with the County. For discretionary permits for subdivisions involving fewer than five lots, the permit application shall identify a secondary ingress and egress route for review by appropriate P&D decision maker. This secondary route may be a consideration in the siting and design of the new development.* The appellants state that staff's interpretation of this development standard is technical and legalistic, ignoring the underlying policy that not only supports, but mandates secondary access precisely because of overriding life and safety considerations both for residents and fire suppression personnel themselves. According to the appellants, if the subdivision were being approved today, the secondary access would be very strongly encouraged, if not mandatory.

Staff Response: Staff has conferred with the Carpinteria/Summerland Fire Protection District and Santa Barbara County Fire Department and confirmed that this development standard solely applies to subdivisions involving five or more lots and is therefore not applicable to the subject property. Staff notified the appellants in the Letter of Denial that this development standard only applies to discretionary projects for subdivisions, and that their property is already established as a legal lot with a principal dwelling. The Planning Commission reached this same conclusion. Since the proposed project involves one lot, this development standard does not apply. Even if this policy were applicable, it requires secondary access to the *subdivision*, not for each individual lot within the subdivision. Staff confirmed with fire officials that the intent of this development standard is to provide secondary emergency access for multiple lots (i.e. a neighborhood), rather than a single lot, and that two access points for this one lot would be highly unusual. As previously discussed in the response to Appeal Issue #1, the Carpinteria/Summerland Fire Protection District has confirmed that the Fire Code does not mandate a secondary means of access or egress for this property, and they have not identified a compelling health and safety reason for a secondary means of access or egress.

Appeal Issue #3: Claim of Other Relevant Fire Development Standards. The appellants state that staff's interpretation of Development Standard Fire-TC-2.4 ignores Santa Barbara County Fire Department's Development Standard #1 (II)(E) for Private Road and Driveway Standards, which provides "Two separate and approved access roads (not alternate access) shall be provided when it is determined by the Fire Chief that access by a single road, in excess of 600 feet, might be impaired by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access (CFC [California Fire Code] Appendix D107.1 & 503.1.2)".

Staff Response: At the request of Planning & Development, fire officials from the Carpinteria/Summerland Fire Protection District and the Santa Barbara County Fire Department conducted site visits during review of the proposed project and did not determine that access by the

existing road is impaired to an extent that requires a secondary road. The Fire Chief has not made the determination discussed in Development Standard #1 (II)(E) for Private Road and Driveway Standards so as to mandate a second access road. As previously discussed in staff's response to Appeal Issue #1 above, the Carpinteria/Summerland Fire Protection District has confirmed that the Fire Code does not mandate a secondary means of access or egress for this property, and the Fire District does not mandate a secondary means of access or egress. Therefore, this development standard does not apply.

Appeal Issue #4: Claim of Insufficient Existing Access. The appellants state that staff's finding in the Letter of Denial, which was upheld by the County Planning Commission, that "existing access on the subject property meets access requirements" is not supported by evidence that the access is frequently blocked and by the evidence from Fire Department officials strongly supporting secondary access.

Staff Response: Development standards exist that allow the Fire Marshal to require secondary access if there are factors that make a singular access insufficient. The Fire Marshal has not found that existing access is insufficient for this property. Please refer to the response to Appeal Issues #1 and 3 for staff's response about the sufficiency of the existing access and the Fire Department's position that they would access the residence from the main driveway, not the proposed access, in the event of a fire.

The existing access easement only provides access to one other lot with a single family dwelling and is therefore not overburdened. The appellants have referred to construction parking on the neighbor's property to the south that they claim congests the access easement. However, construction on the single family residence to the south was completed in 2014 and construction of a detached garage is complete and nearly ready for the final building inspection. Furthermore, the appellants have not submitted any substantial evidence that the access easement is frequently blocked.

Appeal Issue #5: Claim of Carpinteria/Summerland Fire Protection District Support for Secondary Access. The appellants state that staff's statement in the Letter of Denial and County Planning Commission staff report that the Carpinteria/Summerland Fire Protection District is not "requiring" the secondary access ignores the fact that the District Fire Chief states that the secondary access is "prudent" and "fully supports" the secondary access.

Staff Response: Please refer to the response to Appeal Issue #1 for staff's response about the Carpinteria/Summerland Fire Protection District's determination that secondary access is not required and that the secondary access would not be relied upon by the Fire District or other emergency responders in the event of a wildfire event. As previously discussed in Appeal Issue #1, staff organized fire official site visits and corresponded with fire officials via phone, email, and in-person meetings after the appellants first specified that they believed existing emergency access to their property was inadequate in December 2015. When asked by staff to clarify what the Carpinteria/Summerland Fire Protection District meant when their letter stated secondary fire access would be "prudent", the Fire Marshall responded via email stating *please note that the letter from Interim Fire Chief should also contain a statement to the effect that any bridge or driveway must meet the requirement of all other local, county, and state requirements. In answer to your question the Fire Code does not mandate a secondary means of access or egress for this property and the Fire District does not mandate a secondary means of access or egress.* A copy of the email is included as Attachment 10. To date, staff has not received any objections to our initial Director's denial and subsequent recommendations for denial, or any follow up correspondence from fire officials that supports the proposed project. As discussed in Appeal Issue #3, a separate access road is not required unless the Fire Chief makes a

specific determination. The Fire Chief has not made that determination; therefore, two separate and approved access roads are not required.

Appeal Issue #6: Claim of Mandate for Secondary Access and Fire Code Jurisdiction. The appellants state that Santa Barbara County Fire Department Standards mandate secondary access where the governing Fire Chief determines that “access by a single road...might be impaired by the vehicle congestion, condition of terrain...or other factors that could limit access...” (CFC [California Fire Code] Appendix D107.1 & 503.1.2). The appellants also state that Cal Fire, of the California Department of Forestry and Fire Protection, has responsibility for fire suppression in the area and has delegated the responsibility to the Santa Barbara Fire Department (not the Carpinteria/Summerland Fire Protection District), and that County standards therefore should apply.

Staff Response: California Fire Code Appendix D107.1 reads “Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads...” As discussed in Appeal Issue #2 discussing a similar DevStd Fire-TC-2.4, this Fire Code Section is not applicable because the project does not include 30 or more dwelling units, it is a single family home. CFC Section 503.1.2 says “The fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climactic conditions or other factors that could limit access.” As discussed in Appeal Issue #3, the Fire Chief has not made the determination discussed in CFC Section 503.1.2 so as to mandate a second access road. On March 3, 2016, staff received an email from Steve Oaks, Fire Marshal for the Santa Barbara County Fire Department, that confirmed approvals of development on the subject lot are within the jurisdiction of the Carpinteria/Summerland Fire Protection District.

Appeal Issue #7: Claim of Agriculture Permit Requirements. The appellants state that staff’s contention that agricultural uses on the property are not “principally permitted,” and that a Conditional Use Permit is required for new agricultural uses is not relevant. According to the appellants, the property has existing agricultural uses permitted as prior non-conforming uses that do not require a Conditional Use Permit.

Staff Response: Agriculture on properties in the MT-TORO-100 zone district is not a principally permitted use and requires a Conditional Use Permit per Table 2-4 in Section 35.22.030 (Resource Protection Zones Allowable Land Uses) of the County Land Use and Development Code. Table 2-4 in Section 35.22.030 of the County Land Use and Development Code does exempt historical legal cultivated agriculture that was established prior to Conditional Use Permit requirements, but the appellants have provided no evidence that demonstrates the current extent of agriculture was established prior to this requirement taking effect in 2002 when the property was rezoned from 40-E-1-0 (residential, 40-acre minimum lot size) to MT-TORO-100 (Mountainous Toro Canyon, 100-acre minimum lot size). Historical aerial imagery shows that agriculture on the property did not begin until the single family residence was constructed in 1999. In addition, historical aerial imagery shows that agriculture on the property has continually expanded since 2002. Even if the agriculture were legal non-conforming, expansion would require a Conditional Use Permit to allow new agricultural development that did not exist prior to the rezone in 2002. County records show that no Conditional Use Permit has been issued for agriculture on the subject property. As a result, any expanded agricultural operation on the property is not considered legal non-conforming, as indicated by the appellants, and the requirement for a Conditional Use Permit applies.

Agriculture on the property, whether or not legally established, does not justify a secondary means of access through Environmentally Sensitive Habitat as there is no provision in the County Land Use and Development Code or Toro Canyon Community Plan that exempts such development from applicable policies or development standards that protect Environmentally Sensitive Habitat. In addition, Policy BIO-TC-8 in the Toro Canyon Community Plan states that *new or expanded cultivated agricultural uses shall be prohibited within ESH areas and avoided to the maximum extent feasible in ESH buffer areas, except on agriculturally zoned parcels (i.e., AG-I or AG-II) subject to Policy BIO-TC-9*. The access road is entirely within designated Environmentally Sensitive Habitat (ESH) and the subject property is not agriculturally zoned. Since the new road would be to support an agricultural use, this policy also applies and therefore explicitly prohibits new or expanded agricultural uses in the proposed location.

Appeal Issue #8: Claim of Secondary Access Required for Agricultural Uses. The appellants state that staff's conclusion that agricultural uses do not support the need for the proposed secondary access is not supported by evidence, and also ignores the fact that health and safety considerations also support the secondary access. The appellants also state that staff's conclusion that the proposed secondary access road would only serve a *new* agricultural use is not supported by evidence.

Staff Response: The appellants have continually stated that a secondary road is necessary to support agricultural activities on their property, but have not provided any evidence that supports their contention that the secondary access road is necessary to support agricultural uses on the subject property, nor any information that indicates the existing legal access is insufficient to support their agricultural operation. All correspondence staff has had with Fire Department officials has indicated that existing access is sufficient, and staff relayed this information to the appellants in the Letter of Denial, email correspondences, and County Planning Commission staff report. In addition, agricultural uses are not exempt from policies and development standards in the Toro Canyon Community Plan that protect Environmentally Sensitive Habitat and native/specimen trees, which are discussed in Section 6.3 of the County Planning Commission staff report (included as Attachment 5).

The Letter of Denial (included as Attachment 3) does not conclude that the secondary access road would only serve a new agricultural use (as indicated by the appellants); the letter refers to a policy in the Toro Canyon Community Plan that prohibits new or expanded cultivated uses within designated Environmentally Sensitive Habitat and confirms that use of the road to serve the agricultural uses on site would not obviate the need for the road to comply with County policies with respect to Environmentally Sensitive Habitat. The letter also states that existing access is adequate and discusses conflicts with policies and development standards pertaining to Environmentally Sensitive Habitat and protection of native and specimen trees. As discussed in the response to Appeal Issue #1, the Carpinteria/Summerland Fire Protection district has informed Planning and Development that a secondary means of access or egress for this property is not required for emergency access.

Appeal Issue #9: Claim of Exemption from Zoning Permit Requirements. The appellants state that the conclusion that the proposed secondary access road would only serve agriculture ignores the facts that the access road would serve additional water exploration for a water well by the East Montecito Mutual Water Company. The appellants also state that such a road is exempt from Land Use Permit requirements. Lastly, the appellants state that a road for agricultural support is not "development" but an "improvement," and that "improvements" are specifically supported by County agricultural policies.

Staff Response: Staff's Letter of Denial does not conclude that the secondary access road would only serve agriculture; the letter also acknowledges the appellants' desire to have secondary access in the event of a fire, but reiterates that existing access is adequate and discusses conflicts with policies and development standards pertaining to Environmentally Sensitive Habitat and native/specimen tree protection. The County Planning Commission also considered these other factors before making the findings for denial and denying the appeal. This was an appeal issue before the County Planning Commission; however, to date the appellants have not submitted any documents confirming that a new well is proposed on the subject property, or provided any evidence that the proposed road is required to serve the well.

Section 35.20.040 of the County Land Use and Development Code lists activities and structures exempt from planning permit requirements and the proposed bridge/access road would not be included in any of the exempt categories, whether to serve a new well or not. Further, the road does not meet the definition of an agricultural improvement, since the property does not have an agricultural land use designation. Therefore, the proposed road and bridge is considered development and would require a permit and its use to serve a well does not obviate the applicability of County policies protecting Environmentally Sensitive Habitat. Moreover, a well to support the East Montecito Mutual Water Company would require a Conditional Use Permit if it were part of a network of wells serving more than one domestic connection.

Appeal Issue #10: Claim of Compliance with Environmentally Sensitive Habitat Protection Policies. The appellants assert that staff's and the County Planning Commission's conclusion that the proposed secondary access is inconsistent with the policies and development standards in the Letter of Denial (included as Attachment 3) and discussed in Section 6.3 of the County Planning Commission staff report (included as Attachment 5) pertaining to Environmentally Sensitive Habitat is unsupported by evidence in the record, and directly contrary to the biologist's, wildlife biologist's, and arborist's reports filed in support of the application. The appellants also state that the proposed development is consistent with the cited policies because it complies "to the maximum extent feasible."

Staff Response: Since the owner graded the area and removed the trees prior to any zoning or building permit submittals, no review of the previous habitat conditions was conducted. The arborist report submitted by the applicants/appellants simply assessed the potential impacts of installing a bridge and improving the unpermitted access road, and the biological assessment consists of a summary of biological conditions at the site and potential for on-site habitats to support special-status species; neither of these reports provide evidence to support a finding of consistency with applicable policies or "support" the project, as indicated by the appellants. Despite repeated requests, staff has still not received an arborist report or biological assessment that identify and evaluate the impacts on Environmentally Sensitive Habitat and protected tree species that occurred during the unpermitted grading of the secondary access road through the creek corridor. Therefore, the full extent of impacts on riparian habitat and sensitive species is unknown. During site visits conducted by Planning and Development and California Department of Fish and Wildlife staff, it was observed that numerous protected native trees and vegetation were removed and damaged during construction of the unpermitted road based on the presence of tree stumps, piles of cut vegetation, boulders piled up against the base of trees, exposed tree roots from grading, and the unpermitted road itself that was located among an otherwise densely vegetated area.

In addition to conducting site visits, staff gathered additional evidence about impacts to Environmentally Sensitive Habitat through various other methods. For example, staff used Google Streetview to compare an image of the secondary road from 2012 (prior to the grading activities) to a photo from the exact same location in 2015 (after the grading activities), shown as Figure 3 in Attachment 9. A comparison of the photos clearly shows that a large amount of grading took place and native trees/vegetation were removed. Figure 4 in Attachment 9 shows a photo of a chopped down oak tree adjacent to the secondary road. Figure 5 in Attachment 9 shows the appellants' former biologist, Mauricio Gomez, showing staff where an oak tree was cut down. Figures 6-16 in Attachment 9 show additional evidence of native tree and vegetation removal, all of which took place within designated Environmentally Sensitive Habitat. According to the California Department of Fish and Wildlife Streambed Alteration Agreement from December 2015 (which has since been suspended), *adverse effects potentially impacting the fish and wildlife resources identified [in the letter] have already occurred on 0.37 acres of Toro Canyon Creek.*

Additional trees and other native vegetation would likely need to be removed or would otherwise be impacted by the proposed bridge and permanent access road if the project were approved. Specifically, the arborist report submitted by the appellants states that the proposed development would impact over 20% (the County's significance threshold) of the critical root zones of at least an additional 28 native oak and sycamore trees, and one additional sycamore tree would be removed. According to the arborist report, a total of 37 oak trees and 22 sycamore trees would have impacts to their critical root zones to varying extents if the project were approved. Since much of the grading for the road has already occurred, it is also likely that many of these trees have already been impacted to varying degrees. Staff has determined that a secondary access road and associated bridge are not necessary to meet access requirements for the subject property since the Carpinteria/Summerland Fire Protection District has explicitly stated a secondary access road is not required. Therefore, there is no justification to forgo restoration of the degraded area and to allow construction of a bridge and road in conflict with the Environmentally Sensitive Habitat/tree protection policies and development standards discussed in Section 6.3 of the County Planning Commission staff report (included as Attachment 5). Thus, constructing the proposed road and bridge would not comply with the applicable policies to the "maximum extent feasible," as indicated by the appellants. Lastly, the appellants refer to a biologist and wildlife biologist, but only one biological assessment has been submitted to Planning and Development.

Appeal Issue #11: Claim of Compliance with Native and Specimen Tree Protection Policies. The appellants assert that staff's conclusion that the proposed secondary access is inconsistent with the policies and development standards in the Letter of Denial (included as Attachment 3) and Section 6.3 of the County Planning Commission staff report (included as Attachment 5) pertaining to native and specimen tree protection is unsupported by evidence and contrary to the arborist report filed with the application.

Staff Response: Please refer to the response to Appeal Issue #10 for staff's response regarding non-compliance with native and specimen tree protection policies.

Fiscal and Facilities Impacts:

Budgeted: Yes

The costs for processing appeals are provided through a fixed appeal fee and funds in P&D's adopted budget. Total costs for processing the appeal are approximately \$5,000.00 (26 hours). The costs are

partially offset by the appeal fee of \$659.92. This work is funded in the Planning and Development Permitting Budget Program, as shown on page D-289 of the adopted 2016-2018 FY budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on November 8, 2016. The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the notice are included with this Board Letter. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention: David Villalobos.

Attachments

1. Findings for Denial (Case No. 16LUP-00000-00109)
2. Environmental Document – CEQA Notice of Exemption
3. Denial Letter dated April 13, 2016
4. Myers Bridge Appeal Application with Statement of Grounds for Appeal dated August 19, 2016
5. County Planning Commission Staff Report dated July 21, 2016
6. County Planning Commission Action Letter dated August 15, 2016
7. Central Coast Regional Water Quality Control Board Notice of Violation dated May 18, 2016
8. California Department of Fish and Wildlife Suspension of Notification of Lake or Streambed Alteration dated May 9, 2016
9. Site Photos and Images
10. Emails from Steve Oaks dated March 3, 2016 and Ed Foster dated April 12, 2016

Authored by:

Sean Herron, Planning & Development, Development Review Division, (805) 568-3510