



**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&Development
Department No.: 053
For Agenda Of: 1/23/2007
Placement: Departmental
Estimate Time: 30 minutes on 02/13/07
Continued Item: NO
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director(s) John Baker, Director, 568-2085
Contact Info: Zoraida Abresch, Deputy Director, 934-6585
**SUBJECT: Set Hearing for February 13, 2007 to consider Hutchings Appeal
of the Hayes/Holden Tentative Parcel Map**

County Counsel Concurrence:

As to form: Yes No N/A

Auditor-Controller Concurrence:

As to form: Yes No N/A

Other Concurrence: N/A

As to form: Yes No N/A

Recommended Action(s):

That the Board of Supervisors set a February 13, 2007 hearing to consider the Hutchings Appeal of the Planning Commission's approval of 01TPM-00000-00027 (06APL-00000-00040), Fifth Supervisorial District.

At the February 13, 2007 hearing, the Board of Supervisors action should include the following:

1. Adopt the required findings for the project specified in the Planning Commission's action letter dated October 18, 2006 including CEQA findings, (Attachment B);
2. Accept the Negative Declaration 06NGD-00000-00023 as adequate for this project and adopt the mitigation monitoring program contained in the conditions of approval;
3. Deny the appeal and uphold the Planning Commission's October 11, 2006 approval of 01TPM-00000-00027; and,
4. Grant *de novo* approval of Case No. 01TPM-00000-00027 subject to the conditions included in the Planning Commission's action letter dated October 11, 2006.

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Summary:

A. Proposed Project

The Hayes/Holden Tentative Parcel Map consists of a proposal to divide an existing legal parcel of approximately 117 acres into two parcels. Proposed Parcel 1 would be approximately 55 acres in size, and is presently developed with a single family dwelling and accessory structures associated with equestrian use. Proposed Parcel 2 is currently undeveloped and encompasses an idle surface mining/quarry site. The project site is located on the east side of State Route (SR) 166 and the north side of Pine Canyon Road, approximately 20 miles east of the City of Santa Maria and US Highway 101. Existing access to proposed Parcel 1 is taken from Pine Canyon Road; access to future development on proposed Parcel 2 would be taken directly from SR 166.

Proposed Parcel 2 contains two Development Envelopes, A and B, which would encompass all future structural development onsite. Development Envelope A is located adjacent to SR 166 and comprises approximately 12.6 acres, portions of which contain development constraints consisting of Aliso Creek, slopes in excess of 30%, oak trees, and potential geological instability. While geological instability represents the principle constraint to development on proposed Parcel 2, a registered engineering geologist has certified that sufficient area is suitable for structural development is located within Development Envelope A. This determination has been confirmed by the County's consulting geologist.

Development Envelope B, comprising approximately 7.5 acres, is located in the northeastern portion of proposed Parcel 2; provision of access to structural development would require the crossing of Aliso Creek and traversing of slopes associated with the mining/quarrying activity conducted onsite prior to State Surface Mining and Reclamation Act (SMARA) requirements. No geological assessment of this envelope (or associated access) has been conducted. The subject appeal is based on concerns with potential development within Development Envelope B.

B. Planning Commission Action

The Planning Commission considered and approved the Hayes/Holden Tentative Parcel Map project (01TPM-27/TPM 14,590) on October 11, 2006. The application involves AP No. 131-030-042 located on the south side of State Highway 166, at the northeast corner of the intersection with Pine Canyon Road (approximately 0.75 miles east of Tepusquet Road and 20 miles northeast of the City of Santa Maria). At the October 11, 2006 hearing, the Planning Commission voted 5-0 on a motion to approve the project as revised at the hearing (See Attachment B). The primary issues associated with the project, which would divide an approximately 117 acre parcel into two parcels (55 and 62 acres), involve: 1) geologic/landslide hazards onsite; and 2) biological resources associated with access across Aliso Creek (a State Department of Fish & Game designated blue-line creek and a tributary of the Cuyama River). Conditions of Approval Nos. 7, 9, 11, and 17 have been specifically applied to the project as the principal means of addressing these issues.

The Planning Commission approval was appealed by Ralph L. Hutchings, the adjacent landowner on October 23, 2006.

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C. Staff Response to Appeal Letter

The appellant letter, dated October 23, 2006 (See Attachment C), outlines the basis for the appeal as: 1) "Planning Commission allowed Fish & Game to have sole authority for access over Aliso Creek;" and 2) "Applicants have not demonstrated that Envelope B is buildable."

Appellant issue number 1 regarding permitting authority over stream channel alteration is addressed by Condition of Approval 11 (strikethrough and underline indicate Planning Commission changes to the recommended condition language):

11. No alteration to stream channels or banks shall be permitted until the Department of Fish and Game (DFG) ~~, Army Corps of Engineers (ACOE), and Regional Water Quality Control Board (RWQCB)~~ have has been contacted to determine if the drainage falls under their jurisdiction. **Plan Requirements and Timing:** Prior to approval of Land Use Permits, the applicant must receive all necessary permits and agreements from the DFG, ~~ACOE, and RWQCB~~. A copy of the agreement (or a letter stating none is required) shall be delivered to P&D prior to approval of Land Use Permits.

MONITORING: P&D shall confirm DFG, ~~ACOE, and RWQCB~~ approvals.

At the request of the applicant, the Planning Commission deleted the requirement to contact the Federal Army Corps of Engineer's (ACOE) and the State Regional Water Quality Control Board (RWQCB) as duplicative and unnecessary. The County is not empowered to relinquish the regulatory authority of jurisdictional State and/or Federal agencies. As approved, Condition 11 would result in potential approval of County-required Grading and/or Land Use Permits with only DFG input. In the event that ACOE and/or RWQCB assert jurisdiction, the requirements of these agencies would be independently communicated to, and imposed upon, the applicant.

The purpose of Condition of Approval 11 is to facilitate coordination between regulatory agencies, and does not provide a primary basis for the required findings to approve the project. Condition of Approval 9, which requires a 50 foot setback from Aliso Creek, ensures consistency with the Comprehensive Plan policies identified in the P/C Staff Report (See Attachment A).

Appellant issue number 2, regarding the potential development of Proposed Parcel 2, Envelope B without demonstration of geologic stability or feasible access, is addressed by Conditions of Approval 7 and 17:

7. No construction (including but not limited to infrastructure improvements such as road, water, sanitary waste lines, and utility improvements), earth disturbance or construction equipment shall occur or operate outside of any proposed building envelope. This restriction shall not apply to access provisions necessary for Development Envelope B on Proposed Parcel 2. Envelope boundaries shall be staked in the field. Installation of infrastructure improvements shall be cited to minimize removal of native vegetation.

Plan requirements: All plans for proposed construction and development within ~~the~~ Development Envelopes B, including access provisions to access Development Envelope B shall be reviewed and approved by the County Biologist, and may be subject to appropriate protective measures, including avoidance, to minimize potential impacts to flora and fauna. The development envelopes shall be placed on the parcel map, grading and building plans. The

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condition shall be noted on all final plans to describe the activities prohibited outside the approved envelopes. **Timing:** Prior to Land Use Permit approval, the County Biologist shall review and approve all plans for proposed construction and development within the Development Envelopes, including access provisions to access Development Envelope B. Envelopes shall be delineated on the map prior to approval of final map clearance and shall be staked in the field prior to start of grading or structural development.

MONITORING: During plan check, the planner shall ensure that all construction and storage of construction equipment and materials is located within the approved envelope. Staking shall be checked during the preconstruction meeting. P&D grading inspectors and permit compliance planners shall inspect the site during all construction phases to ensure development is confined within development envelopes and that staking remains in place during site grading and construction.

17. Development on proposed Parcel 2 requiring a Land Use Permit, including access drives, shall be limited to the 5.75 acre area proven to be geologically stable pursuant to the Addendum to Geologic Hazards Report; Holden Property Lower Building Site (Earth Systems Pacific, 05-31-06). In order to approve access and development within the remainder of the Development Envelopes, the applicant shall demonstrate, through a certified geologic report, that the area proposed for development is geologically stable. **Plan Requirements:** The applicant shall submit required certified geologic report with Land Use Permit application. Certified developable areas shall be depicted on the Site Plan. **Timing:** P&D will review and approve certified geologic report prior to LUP approval.

This appeal issue addresses the suitability of future development on Proposed Parcel 2, but does not question the appropriateness of the proposed land division. Tentative Parcel Map approval requires demonstration that each proposed parcel demonstrate adequacy of public and/or private services (i.e. domestic water, sewage disposal, and access) pursuant to Land Use Element Land Use Development Policy (LUDP) 4. Existing development on the subject property would be entirely contained within proposed Parcel 1. Proposed Parcel 2, which is currently vacant and constrained by geologic hazards and biological resources, contains two development envelopes: A and B. Envelope A, through demonstration of geologic stability and avoidance of significant biological resources, is consistent with Comprehensive Plan policies, including LUDP 4 provisions. As a result, there is no additional necessity to demonstrate that Envelope A may be developed safely and in conformance with County Comprehensive Plan and Zoning Ordinance requirements. However, Conditions of Approval 7 and 17 ensure that CEQA and Comprehensive Plan issues associated with biological and geologic resources are appropriately addressed for potential development within Envelope B. Envelope B is depicted on the site plan in order to facilitate future development, if demonstrated feasible, without the need to return to the decision-maker for a Recorded Map Modification.

D. Facilitation Meeting with County Counsel between Appellant and Applicants

A facilitation meeting between the Appellant and the Applicants has been scheduled by County Counsel for January 11, 2007, and the results will be described in an agenda letter docketed to your Board prior to the February 13th hearing. The purpose of the meeting is to clarify issues pertaining to the appeal, to identify possible solutions, and to notify parties in dispute of available mediation services which may assist in resolving disagreements.

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Background:

A. Tentative Parcel Map

The subject parcel is located within the Unlimited Agriculture (U) zone district under the outdated Ordinance 661. The permit process itself, however, is governed by Article III (Replaced by the Land Use Development Code (LUDC) as of 01/02/07). While typically, all Ordinance 661-zoned parcels seeking approval of a discretionary permit application must be rezoned to an agricultural designation under the current Article III/LUDC zoning ordinance pursuant to current County administrative practices, no rezone has been required since the CEO Comprehensive Planning Division's Three-Year Work Program includes the complete rezoning of all 661 zoned parcels. The project site is within the study area of the 661 Ordinance Consistency Rezone project and has been identified to be rezoned to AG-II-40.

B. Geologic Hazards

Mining activities occurred on approximately 18.92 acres of the north-east portion of proposed Parcel 2 prior to the adoption of the State Surface Mining and Reclamation Act (SMARA). Although the site is not subject to SMARA reclamation requirements, natural revegetation of much of the previously mined area is apparent. Extensive cut slopes also remain and are clearly visible from SR 166.

Considerable portions of proposed Parcel 2 are potentially geologically unstable, due to natural landslide potential and pre-SMARA mining activities onsite. Geologic Hazards Reports addressing site conditions have been prepared by the applicant's registered geotechnical engineering firm, Earth Systems Pacific, and reviewed by County staff and consultants (These reports, dated January 30 and May 31, 2006 are included as attachments to the P/C Staff Report). Proposed Parcel 2 contains a demonstrated developable area of approximately 5.75 acres, contained in part within Development Envelope A. The remaining unstudied portions of Development Envelope A and the entirety of Development Envelope B (approximately 14.25 acres), as well as the remaining locations outside of the proposed Development Envelopes would be subject to Condition of Approval 17 (discussed above).

Fiscal and Facilities Impacts:

Budgeted: Yes No

Fiscal Analysis:

Narrative:

The subject appeal is a one-time project. The costs for processing appeals are provided through a fixed appeal fee and funds in the P&D adopted budget. A \$443.00 fee was paid by the third-party appellant to file the appeal, \$300.00 of which were deposited to a P&D account with the balance going to County Counsel. The P&D estimate for processing of the appeal is \$2,000; actual costs in excess of the \$300 collected will be absorbed by P&D. These funds are budgeted in the Permitting and Compliance Program of the Development Review North Division, as shown on page D-294 of the adopted 2006/2007 fiscal year budget.

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Staffing Impact(s):

Legal Positions:

n/a

FTEs:

n/a

Special Instructions:

Clerk of the Board shall complete noticing in the Santa Barbara News-Press and shall complete the mailed noticing for the project at least ten (10) days prior to the hearing (mailing labels attached).

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

Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors final action.

Attachments:

- A: Planning Commission Staff Report dated September 22, 2006
- B: Planning Commission Action letter dated October 18, 2006
- C: Hutchings Appeal to the Board of Supervisors dated October 23, 2006
- D. Public Comment letters

Authored by: John Karamitsos, Supervising Planner, 934-6255, on 01/09/06

cc: none