

**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:** September 6, 2002  
**Department Name:** P&D  
**Department No.:** 053  
**Agenda Date:** September 17, 2002  
**Placement:** Departmental  
**Estimate Time:** 10 Mins. staff/45 mins. total  
**Continued Item:** NO  
**If Yes, date from:**  
**Document File Name:** F:\GROUP\Permitting\Case  
Files\LUS\1990s\97  
cases\97lus509\Board  
Appeal\BSFINAL.doc

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**TO:** Board of Supervisors

**FROM:** Rita Bright, Planning Commission Secretary  
Planning and Development Department

**STAFF**

**CONTACT:** Peter Lawson, 568-2021

**SUBJECT:** **Hearing to consider the appeals of Richard Monk** of the Planning Commission's decision to uphold the Planning & Development's decision to revoke a minor change to the Land Use Permit for a retaining wall in conjunction with a driveway (97-LUS-509 MO AP01), to deny Land Use Permits for a guest house (99-LUS-585 AP01), a pool (99-LUS-506 AP01), and to deny a Land Use Permit for a retaining wall adjacent to an existing garage (99-LUS-525 AP01). The parcel is identified as APN 011-050-024, located at 910 Hot Springs Road in Montecito, First Supervisorial District.

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**Recommendation(s):**

Staff recommends that the Board of Supervisors take the following action:

1. Affirm the Planning Commission's decision on the following:
  - a) To uphold the Planning & Development's decision to revoke a minor change to the Land Use Permit for a retaining wall in conjunction with a driveway (97-LUS-509 MO).
  - b) To deny a Land Use Permit for a guesthouse (99-LUS-585).
  - c) To deny a Land Use Permit for a pool (99-LUS-506).
  - d) To deny a Land Use Permit for a retaining wall adjacent to an existing garage (99-LUS-525)
2. Deny the appeals

3. Provide direction to the applicant to work with staff to submit a new Land Use Permit application for a project that would be consistent with the Montecito Community Plan and the Article IV Zoning Ordinance.

**Alignment with Board Strategic Plan:**

The recommendation(s) are primarily aligned with actions required by law or by routine business necessity.

**Executive Summary and Discussion:**

Executive Summary

The project site consists of one legal lot that is currently developed with a single-family dwelling, a detached garage and associated motor court, a pool, and a trellis. A driveway from Hot Springs Road provides access to the project site. In addition to the driveway, there is a secondary drive from Mountain Drive. There are four separate appeals before the Board. The primary appeal is related to the secondary driveway. The Planning Commission sustained a revocation of a minor change<sup>1</sup> to Land Use Permit 97-LUS-509 MO (approved on January 2, 1998) which related to a retaining wall and grading of a new driveway off of Mountain Drive. The applicant has challenged this revocation on procedural grounds. The other three appeals relate to permits 99-LUS-506 MO, 99-LUS-525 MO and 99-LUS-585 MO. These three permits were denied because the as-built driveway has never been legally permitted and, therefore, the property was considered to have an active Zoning Violation.

The zoning violation stems from the Board of Supervisors October 26, 1999 denial of Land Use Permit number 98-LUS-469. Land Use Permit 98-LUS-469 initially was approved by staff on November 24, 1999, for grading of the secondary drive from Mountain Drive, including retaining walls and drainage improvements as-built by the applicant. The as-built plan denied on appeal by the Board on October 26, 1999 is the successor to 97-LUS-509, the subject of one of the appeals presently before the Board.

The Board of Supervisors directed the applicant to bring the property into compliance within six months of their action. No remedial permits have been submitted to authorize that work. To date only a small portion of the unpermitted grading has been removed. Thus the project site is not in conformance with all of the provisions of the Article IV Zoning Ordinance and the other three permits were not able to be issued. The following is a detailed description of the permits involved:

Description of Permits

Because of the number of permits approved, issued, or appealed at this property, a description of the various permits are set forth below.

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<sup>1</sup> The change to the approved permit (97-LUS-509) is known as a minor change under Appendix C of Article IV, however the stamp that staff uses when there is a change to plans states “revision”, therefore minor change and revision mean essentially the same.

## 97-LUS-509 MO

- Approved January 2, 1998

This permit was for the construction of a new approximately 580-foot long driveway. Grading quantities for the new driveway were 65 cubic yards (c.y.) cut and 45 c.y. fill. The permit also included a new motor court, which would require 444 c.y. of cut and 100 c.y. of fill, retaining walls associated with the new motor court would have a maximum height of 6.5 feet. The new driveway, extended approximately 580 feet along the easterly edge of the property and was setback approximately 11 feet from the property line at its closest point. The driveway was proposed to be approximately twelve feet wide .

Drainage improvements were also proposed as a part of this improvement. Those improvements included a below grade 15 inch round storm drain to conduct surface drainage from an inlet structure located near the northeast corner of the lot, and a drop inlet located approximately at the mid-point of the driveway extending to a velocity impact basin located at the southeastern corner of the lot at East Mountain Drive. In addition to this drainpipe, a six inch drain pipe would be placed within the driveway and would be connected to drop inlets every twenty feet. The proposed drainage system also included a 500-foot long graded swale 10 feet in width and 12 inches deep, to be located between the driveway and the easterly property line. The driveway follows most of the footprint of an unimproved dirt road that begins at Mountain Drive and terminates at a motor court. The motor court was originally proposed at six feet in height and approximately 120 feet in length. The eastern side of the motor court was proposed at ten feet from the northern property line and stepped to the south until it is approximately seventy-five feet from the northern property line.

## 97-LUS-509 (Revision # 1)

- Approved January 12, 1998
- Issued January 13, 1998

A head wall was added to the storm drain and a 3-foot high 210-foot long floodwall is added at the east property line. The wall would begin approximately 125 feet north of East Mountain Drive along the eastern property line. A thirty-foot long section of the floodwall would also be constructed on the adjacent property per an agreement between the two property owners. Six-inch high stone curbs were added to the entire length of the driveway, except for a small portion along the west side of the driveway where a 3-foot high rubble wall was called out (identified as detail 1 on the plans).

## 97-LUS-509 (Revision #2)

- Revised July 7, 1998
- Stop Work Orders July 14 and August 18, 1998
- Revoked October 2, 1998

This revision replaced the 6-inch high rock curb with a retaining wall varying in height from three to six feet in height, for a length of approximately 234 lineal feet along the eastside of the driveway. Certain notations were added to the previously issued plans. Top-of-wall elevations were called out to show that the maximum

height of the retaining wall would not exceed six feet. A notation that detail 3 (motor court retaining wall) applies to driveway retaining wall as well was added to the plans. However, driveway contours and sections on the plans remained the same. In addition, a note on the revision stamp indicates that the revision is for original approved grading.

#### 98-LUS-067 MO

- Approved April 23, 1998
- Issued May 5, 1998

This permit was for a new below grade accessory structure consisting of an 800 square foot detached garage and 751 square foot guesthouse combined into one single accessory structure totaling 1,551 square feet. A portion of the western half of the motor court retaining wall approved under Land Use Permit number 97-LUS-509 was incorporated into the north wall of the proposed structure. Grading for the guesthouse would be approximately 812 cubic yards of cut, 275 cubic yards of fill, and 537 cubic yards of export.

#### LUP 98-LUS-067 MO (Revision #1)

- December 19, 1998

The approved permit was revised February 5, 1999 to replace the previously approved structure with an 800 s.f. detached garage and an approximately 75 s.f. attached storage area., eliminating the guesthouse component of the structure. The square footage of the footprint is reduced from 1,551 square feet to 875 square feet. A subsequent application for another guesthouse, 99-LUS-585 (see below), was made and is a subject of this appeal.

#### 98-LUS-469 MO

- Approved November 24, 1998
- Appealed December 3, 1998

This permit was for a Land Use Permit for the construction of "As-built" retaining walls supporting a new driveway and grading, drainage improvements and retaining walls for a new motor court constructed on site. Grading for the driveway and motor court included approximately 1,355 cubic yards, (c.y.) cut and 1,355 c.y. fill. Approximately 812 c.y. of the total 1,355 c.y. of fill came from the excavation required in construction approved in Land Use Permit 98-LUS-067 MO for an accessory structure on the project site. The new driveway is approximately 580 feet long from East Mountain Drive, at the south, to the motor court area located in the northernmost portion of the lot. The driveway varied from 12 to 15 feet in width except in the area of a fire department turnout where the driveway increased to twenty-eight feet at its maximum point. The retaining wall directly associated with the new driveway was approximately 340-feet long, a maximum of six feet in height, and located from six to twenty-five feet from the property line. Retaining walls, approximately 100-feet in total length, associated with the motor court would be a maximum of ten feet in height. Retaining walls, approximately 100-feet in total length, associated with the proposed detached garage (98-LUS-067 MO, approved April 23, 1998 and revised January 29, 1999) would be a maximum of ten feet in height. The location of the motor court retaining walls was re-located further to the north. The western

most point of the motor court retaining wall is now approximately thirty feet from the northern property line and the middle portion of the retaining wall is approximately five feet from the northern property line. Drainage improvements include a below grade 15 inch storm drain to conduct surface drainage from an inlet structure located near the northeast corner of the lot and a drop inlet located within the driveway to a velocity impact basin located at the southeastern corner of the lot at East Mountain Drive. The drainage system includes a graded swale six feet in width and 18 inches deep which would be located along the eastern lot boundary between the driveway retaining wall and the boundary to conduct surface drainage to the velocity impact basin. The velocity impact basin consists of an energy dissipater at the terminus of the two drainpipes and the swale that consists of a 210 square foot energy dissipater with two cascade weirs of approximately 60 feet in width and two feet in height. Additionally, a four foot, fourteen inch deep roadside "V" ditch is constructed along Mountain Drive to an existing inlet 100 feet to the east. An oak tree replacement plan is proposed that would include planting and maintaining approximately 150 new oak trees at 50 locations in two areas of the site. The differences between Land Use Permit 98-LUS-469 and Land Use Permit 97-LUS-509 are discussed in the Appeal Section under item 2.

99-LUS-506

- Denied by staff March 17, 2000

The proposed permit is for the reconfiguration of an existing swimming pool into a fifteen-foot by fifty-foot lap pool and a new thirty-six foot spa. The reconfigured pool would be longer, but narrower than the existing pool and the pool equipment would be located adjacent to the existing pool equipment structure.

99-LUS-525

- Approved October 1, 1999
- Appealed October 11, 1999

The proposed permit is for a Land Use Permit for a thirty-eight foot long retaining wall located on the west side of an existing garage. Average height of the retaining wall would vary from five feet to seven feet. The retaining wall would connect with an existing retaining wall located on the west side of the garage and terminate at an existing three foot tall retaining wall located to the south-west of the existing garage. Grading would be less than fifty cubic yards as the retaining wall would replace a loose rock wall.

99-LUS-585

- Denied by staff March 17, 2000

The proposed permit is for an 800 square foot guesthouse that would be approximately twelve feet in height. The proposed guesthouse would be located on the west side of the existing single family dwelling. The guesthouse would not contain a kitchen and would include a wet bar of seven feet in length only. Additional required parking would be provided in the existing garage. Grading of approximately 44 cubic yards of cut and export would be required to prepare the site.

00-LUS-232

- Permit on hold pending resolution of appeals

The proposed permit is for an 800 square foot trellis built without benefit of building permits located to the east of the existing dwelling. The height of the structure is approximately ten feet and there would be minimal grading for the project. Once the appeals are resolved, staff will review this permit for purposes of consistency with the applicable ordinances and community plan.

### Summary of Permits

The four appeals that are being heard by your Board are the revocation of the revision of Land Use Permit No. 97-LUS-509, which the appellant contends was revoked incorrectly and denial of 99-LUS-506, 99-LUS-525, and 99-LUS-585. Staff has described the other permits to provide the context for these four appeals. These additional permits are relevant to the appeals being heard. Permit number 98-LUS-469 includes all of the revisions and field changes that were made to the property while permit 97-LUS-509 was in effect and after its revocation. The Board previously reviewed the appeal of 98-LUS-469 and upheld the Planning Commission's decision to deny the permit, which created a zoning violation on the property. In response, the applicant filed suit in Santa Barbara Superior Court Case No. 01002001 challenging that decision.

The hearing before the Planning Commission on appeals by the applicant and appellants Rutledge (neighboring property owners) on Land Use Permit's 99-LUS-525, 99-LUS-506 MO & 99-LUS-585 MO were held in abeyance until March 2000, after efforts to facilitate resolution of the litigation terminated. Land Use Permit 99-LUS-525 (retaining wall west of garage) was originally approved by P&D staff, but its issuance was prevented by the appeal of the Rutledges. 99-LUS-506 MO & 99-LUS-585 MO were subsequently denied by staff based on the fact that before the time of decision, the Board of Supervisor's had made its October 26, 1999 decision to deny the Land Use Permit 98-LUS-469, thus making the unpermitted improvements a zoning violation on the property. Therefore, at that point, with a Zoning Violation deemed to exist on the property, staff was unable to make the findings necessary under §35-482.5.3, Findings Required for Approval of a Land Use Permit, to approve the Land Use Permits, and the two permits were denied. The following is a chronology of the project site:

### Chronology

**SUMMER & FALL 1997** - Applicant begins doing preparatory work improving dirt road without permits. The adjacent property owners made multiple complaints to the Building & Safety Division about the work occurring on the site. The Grading Inspector conducts site visits that result in a notice of correction being issued in August.

**AUGUST 13, 1997** – A Land Use Permit 97-LUS-509 is submitted for a new driveway (for a detailed description of the permit please refer to previous section – permit descriptions) from Mountain Drive.

**NOVEMBER 1997** - Work continues in the field prior to permit issuance. Building and Safety responds to complaints from neighbors indicating that grading in the vicinity of the proposed driveway may be impacting a historic drainage swale to the east of the proposed driveway. Because an application has already been submitted, no correction notice is issued, but the applicant does submit modified plans to Planning and Development incorporating grading that has already occurred.

**JANUARY 2, 1998** – The Zoning Administration Division approves 97-LUS-509. Thus commencing the appeal period. Please refer to Description of Permits section of this report for detailed description of 97-LUS-509.

**JANUARY 12, 1998** – During the appeal period, the applicant submits for a revision to the approved Land Use Permit. These revisions include a head wall to be added to the storm drain and the addition of a three-foot high, 210-foot long floodwall on the east property line. A thirty-foot long section of the floodwall would also be constructed by the adjacent property owner on their property per an agreement between the two property owners. Six-inch high stone curbs were added to the entire length of the driveway, except for a small portion along the west side of the driveway where a 3-foot high rubble wall was called out (identified as detail 1 on the plans).

**JANUARY 13, 1998** – Land Use Permit 97-LUS-509 is issued with the changes permitted under Revision 1.

**JUNE 25 & 30 1998** – Two correction notices were issued by the grading inspector for the work being done under permit number 97-LUS-509. One was for the excavation occurring for a retaining wall associated with the proposed driveway that was not on the approved plans. This correction notice was issued because the applicant had begun constructing formwork for a retaining wall along the east side of the driveway. The other correction notice addressed the area of the proposed retaining wall for the motor court located to the west of the garage area; this retaining wall was being relocated further to the north, which had increased the cut into the hillside to fourteen feet. According to a declaration given by Peter Harmer the grading inspector for the project (please refer to Attachment A, Exhibit 3 for a complete copy of Mr. Harmer's declaration), the correction notices were issued for excavation. Mr. Harmer issued correction notices requiring the contractor to submit revised plans showing the retaining wall adjacent to the driveway.

**JULY 7, 1998** – As a result of the correction notice for modification of approved plans, the applicant brought a corrected set of plans to the Planning and Development Department zoning counter and requested a revision to the land use permit (97-LUS-509). This 2<sup>nd</sup> revision of the Land Use Permit shows the 6-inch rock curb replaced with a three to six foot high, 234 feet long rock retaining wall along the east side of the drive. Driveway elevations and grades remained the same on the plans, there is no change in the contour lines across the driveway. Planning & Development approves the second revision to the approved plans. At this point the applicant does not address the increased cut of the motor court wall area.

**JULY 14, 1998** – A stop work order is issued by Building and Safety for non-compliance of the Land Use Permit (97-LUS-509).

**JULY 17, 1998** – The stop work is lifted by Building and Safety for the motor court retaining wall and drainage improvements only.

**AUGUST 17, 1998** – Staff meets with the contractor, drainage engineer, and others at site visit to determine what grading has occurred on the site and if it conforms to approved plans. Staff found that the applicant increased the width of the driveway in the middle section to accommodate a fire department turn out. The overall configuration of the driveway was moved approximately three to four feet to the east to accommodate a planter for trees along the driveway. The distance between the northern half of the driveway and the eastern property line has been reduced at its closest point from approximately eleven feet from the property line to approximately six feet. During the site visit staff also found that the retaining wall for the driveway approved as a revision on July 7, 1998 was back filled and the retaining wall for the motor court exceeded the approved six feet.

**AUGUST 18, 1998** – A stop work order is issued by the Zoning Administration Division of Planning & Development is placed on the project. In the stop work letter the applicant is directed to obtain permit for an as-built retaining wall for a motor court and drainage improvements before re-commencing work. The stop work order resulted from the August 17, 1998 site visit by planning staff (detailed immediately above).

**AUGUST 31, 1998** – The appellant submits Land Use Permit 98-LUS-469 MO in response to the letter dated August 18, 1998 from Noel Langle. This permit was initially submitted to address the as-built work completed on the retaining wall for the driveway and motor court and the new location of the drainage system. Neighbors in the vicinity of the project raise concerns about the drainage system that is proposed. They feel that the historic drainage system from north of their properties is being concentrated toward their property and will also impact East Mountain Drive. The neighbors hire an engineer to review the drainage plans and request that Planning and Development thoroughly review all drainage plans before allowing work on the site to commence.

**SEPTEMBER 24, 1998** - For health and safety reasons, Frank Breckenridge, acting as the County Building Official, issued a Notice and Order pursuant to County Code §10-2.11. The notice was issued based on two concerns that had the potential to damage off-site properties and affect the health and safety of residents and workers. The existing historic drainage pattern and systems have been disturbed or modified, and a large cut slope approximately 14 feet high (almost vertical) was made at the rear of the property (at the motor court). The order directed the property owner to abate these conditions by modifying and completing the drainage system in accordance with engineered plans approved by the County, and by temporarily shoring up the 14 foot high cut slope and taking steps to control the erosion. Mr. Breckenridge states in a letter to the neighbor's counsel that while the Notice allows the applicant to stabilize the slope and address the drainage issues, it does not permanently vest the applicant in any work completed under this Notice until the proper permits are issued to legalize the work.

In response, the property owner had new engineered drainage plans prepared that modified the improvements by adding a more substantial energy dissipater at the point of discharge to reduce the velocity of the runoff to Mountain Drive.

**OCTOBER 2, 1998** – Planning & Development revoked the revision to the original land use permit (97-LUS-509) that allowed the construction of the driveway retaining wall and increase in the elevation of the driveway. In the letter revoking the revision to the permit, the applicant is directed to incorporate the revision in the newly submitted permit application (98-LUS-469). The Deputy Director of Zoning Administration, Noel Langle revoked the revision because he did not believe that the changes granted under the revision met



the criteria for the issuance of a revision as defined in Appendix C of Article IV, "Guidelines for Minor Changes to Land Use and Coastal Development Permits." (Please note that a copy of Appendix C is attached to the Planning Commission Staff Report attached hereto as Attachment B). Additionally, based upon his site visit of August 17, 1998, Mr Langle believed that the applicant continued to do work that went beyond the scope of the project. More specifically, the applicant increased the height of the retaining walls, which increased the elevation of the driveway. The applicant had also increased the width of the driveway to accommodate a planter and fire department turnout.

**OCTOBER 9, 1998** – Legal counsel for Mr. Lambert appealed Planning & Developments decision to revoke the revision to Land Use Permit 97-LUS-509. The parties agree that no work on the appeal will occur until the new land use permit submitted on August 31, 1998 (98-LUS-469) has had a final action..

**NOVEMBER 24, 1998** – Land Use Permit Number 98-LUS-469 was approved by Planning & Development. (For a detailed description of the permit please refer to the previous section – permit descriptions and for a discussion on the differences between this Land Use Permit and Land Use Permit number 97-LUS-509 please refer to the appeal discussion.)

**DECEMBER 3, 1998** –Land Use Permit 98-LUS-469, was appealed by two adjacent property owners. They challenged the permit's consistency with the Montecito Community Plan. The neighbors also were concerned that the increased elevation of the driveway and installation of retaining walls might impact the existing drainage located on the easterly side of the driveway at the property line and concentrate flows onto their property. In addition, they were concerned with the potential nuisance from the ingress/egress of automobiles (i.e. lights shinning on their property, auto emissions and noise). A portion of the appellant's dwelling is located at a similar elevation as the lower portion of the new driveway. Finally, the adjacent neighbors' felt that the Lambert's continued to do work that exceeded the scope of their issued permits and continued to grade while a stop work order was in place. As stated in the appeal discussion, the driveway increased in width and is located closer to the appellant's property and was never reviewed under Land Use Permit 97-LUS-507.

**MAY 19, 1999** - The Planning Commission overturned staffs' recommendation to deny the appeal and upheld the appeal of Land Use Permit 98-LUS-469. The Planning Commission based its decision on the fact that the project was inconsistent with Montecito Community Plan policies and Montecito Architectural Guidelines and Development Standards relating to minimization of grading, subordinating the development to natural landforms, not protecting biological resources or providing good architecture.

Specifically, the Commission found that the project could have been carried out with less grading by following the existing contours of the project site, as originally proposed. The Commission believed that this was demonstrated by the fact the driveway as constructed required approximately 1,000 cubic yards of cut and 1,000 cubic yards of fill while the original issued permit required only 65 cubic yards of cut and 45 cubic yards of grading to construct the driveway.

The Commission also found that the driveway impacted the drainage area and native vegetation in the area of the driveway. The driveway was originally approved further to the west (approximately 11 feet from the easterly property line), located roughly at existing grade. The addition of the retaining walls and placement of the driveway approximately five feet from the eastern property line had an adverse effect on site drainage

and necessitated the installation of two drainpipes and an energy dissipater at the southeasterly corner of the property.

Finally the Commission found that the project was inconsistent with the Montecito Architectural Guidelines. As stated above, the driveway was originally approved without retaining walls and minimal grading. The driveway as constructed was located at a higher elevation, which required the use of retaining walls, thus impacting the adjacent property. An alternative location as demonstrated under the originally approved permit would have been preferable. The Commission went on to state that because there was an existing driveway that provides access to the lot from Hot Springs Road, the property owner could have avoided impacts to oaks, the natural landform and the drainage if the had continued to use the primary access, since this was a secondary access drive, and therefore ancillary to primary use and enjoyment of the property.

The Lambert's appealed the Planning Commission's decision to the Board of Supervisors.

**AUGUST 30, 1999** – Application Number 99-LUS-506 is submitted for the reconfiguration of an existing swimming pool into a fifteen-foot by fifty-foot lap pool and a new thirty-six foot spa.

**SEPTEMBER 3, 1999** - A Land Use Permit (99-LUS-525) for a thirty-eight foot long retaining wall located on the west side of an existing garage is submitted.

**SEPTEMBER 30, 1999** – A Land Use Permit (99-LUS-585) for a proposed project is for an 800 square foot guesthouse that would be approximately twelve feet in height is submitted.

**OCTOBER 1, 1999** - Land Use Permit number 99-LUS-525 was approved by staff and this decision was appealed by the neighbor on the basis that any development approved on the project site might serve vest the unpermitted development (i.e. field changes to the driveway).

**OCTOBER 26, 1999** - The Board upheld the Planning Commission's decision to deny 98-LUS-469, the "as-built" driveway. In upholding the Planning Commission's decision, the Board directed the applicant to bring the project into compliance within six months of final Board of Supervisor's action. Because the Board of Supervisors action to uphold the Planning Commission's decision constituted a final action, the scope of work that exceeded the original approved permit for driveway Land Use Permit (97-LUS-509) was now determined to be a zoning violation.

**MARCH 13, 2000** – A zoning complaint is filed on the property alleging construction of a trellis. Zoning enforcement officials conduct a site visit and determine that a trellis was constructed, but is not permitted.

**APRIL 17, 2000** – A Land Use Permit (00-LUS-232) was submitted for an asbuilt 800 square foot trellis. The permit is held in abeyance until the appeals of the four land use permits are resolved and the zoning violation on the project site is corrected.

**MAY 17, 2000** - The Planning Commission denied the applicant's appeal of staff's decision to revoke the second revision to the Land Use Permit 97-LUS-509.

The Planning Commission in rendering its decision considered whether the revision approved by staff on July 7, 1998 had satisfied the criteria of Appendix C of Article IV, Minor Changes to Land Use and Coastal Development Permits. The Planning Commission focused primarily on the basis for revocation rather than on the appropriateness of the development. This was due in part because the proposed changes permitted under the second revision of 97-LUS-509 was eventually reviewed as part of another Land Use Permit (98-LUS-469 MO). As stated previously, 98-LUS-469 was appealed to both the Planning Commission and the Board of Supervisors with the Board ultimately denying the permit on the basis of policy inconsistencies.

With regard to the revocation procedure, based on the criteria set forth in Appendix C, the project did not meet two key criteria. The first criterion requires that a permit revision cannot be issued if the project has been the subject of neighborhood controversy. The project was subject to neighborhood controversy prior to the initial application being submitted due to complaints received prior to Issuance of a permit. This is evidenced in Peter Harmer's declaration where he cites that complaints were received by the Building & Safety Division in the Summer & Fall of 1997. In addition, during the appeal period prior to issuance of 97-LUS-509 the applicant reached an agreement with the adjoining property owners, the Rutledges to incorporate a flood wall including the extension of approximately thirty feet onto their property (with the portion on the Rutledges property to be constructed by the Rutledges) into the approved plans. The agreement was reached in exchange for the neighbor's agreement not to appeal the approved permit. During the intervening time from the issuance of the permit on January 13, 1998, to the time the second revision was approved on July 7, 1998, there were additional complaints received from neighboring property owners due to concerns about the impact the proposed project would have on drainage. The controversy over this revision resulted in a petition for writ of mandate being filed by the Rutledges against the County and the applicant for the wrongful approval of the permit revision in Santa Barbara Superior Court Case No. 225643.

The second criterion requires that a project would otherwise be exempt from a Land Use Permit. A retaining wall in the Article IV Zoning Ordinance is not cited as an exempt activity. In contrast, in Articles II, and III a retaining wall of four feet or less (including height of the footing) is specifically listed as being exempt from a Land Use Permit.

The Planning Commission denied the appeal and upheld Planning and Development's decision to revoke the permit. While the appellant argued that the County had given them direction in the field on how to proceed, the Planning Commission emphasized that in matter of issuing a permit, the County is defined as the decision-maker authorized to approve and issue a permit or revision.

The Commission, on the advice of Counsel stated that there was no basis for the County to be estopped from revoking the permit. The finding was based on the fact that the applicant had exceeded the scope of the approved work and had not provided the County with all of the information on the proposed work at the project site. Please refer to the appeal issues section item 2 that enumerates the differences between this permit, 97-LUS-509 and Land Use Permit 98-LUS-469.

Finally, the applicant stated that he reduced the height of the motor court wall by four feet, removed the Fire Department required turnout, and removed approximately sixty feet of the retaining wall during the time between the Board of Supervisors Hearing and this hearing. The Planning Commission found that the revocation of the revision was still correct. The Commission also commented that now that the driveway is a secondary access, there is less need for the driveway.

**July 26, 2000** – The Planning Commission denied the applicant’s appeals of staff’s denial of 99-LUS-509, & 99-LUS-585. Initially, the Planning Commission was scheduled to hear these three appeals along with the appeal of the revocation at the May 17, 2000 hearing. However, these appeals were heard separately since all parties agreed that they were related to and dependent upon a finding that a zoning violation existed on a project site. In addition, the Planning Commission affirmed the Rutledge’s appeal and denied 99-LUS-525 ruling that the permit was improperly issued by staff, given existence of a zoning violation on the property.

Board of Supervisors’ Appeal Issues

97-LUS-509 MO

1. *The driveway project was built in compliance with the revised land use plan [97-LUS-509] approved by County staff.*

Staff response:

A stop work order was issued by the Planning & Development Department on July 14, 2002. A second stop work order was issued on August 18, 2002 (see Exhibit 5). This was done after a site visit on August 17, 1998 verified that the applicant continued to do work outside the scope of the issued Land Use Permit and subsequent revisions. In the stop work order it specifically stated that “grading and site development has occurred which is in excess of that which was permitted by Land Use Permit 97-LUS-509 MO and Grading Permit No. 263422, both as revised on July 7, 1998.” In that same letter, the applicant was directed to apply for a new permit to validate all of the changes that occurred in the field.

The applicant filed a new Land Use Permit on August 31, 1998 98-LUS-469 MO which was intended to incorporate all changes that exist in the field. It is the Development Review Division staff’s belief that this plan most closely approximates what is in the field today.

The following discussion highlights the significant differences between the Land Use Permits 97-LUS-509 and 98-LUS469 (please refer to description of permits section of this report for a complete discussion of these two permits):

- 97-LUS-509, including all revisions, included total grading quantities of 509 cubic yards of cut and 145 cubic yards of fill. 98-LUS-469 included grading of approximately 1,340 cubic yards of cut and fill. This represents a *difference* of 831 cubic yards of grading. It should be noted that the Development Review Division’s revision stamp approving the second revision to 97-LUS-509 included a notation that the revision included “original approved grading.”
- 97-LUS-509 permitted a motor court wall with a maximum height of approximately six and one-half feet and it is stepped to the south from its eastern most point. 98-LUS-469 included a motor court retaining wall with a maximum height of thirteen feet located further to the north of the previously approved location.

- 97-LUS-509 permitted the driveway approximately eleven feet from the easterly property line at its closest point. 98-LUS-469 permitted the driveway located at approximately six feet from the easterly property line at its closest point.
- 97-LUS-509 depicts the driveway remaining at approximately twelve feet in width for the entire length. 98-LUS-469 depicts the northern portion of the driveway that terminates at the motor court increasing in width to approximately thirty-five feet.
- 97-LUS-509 depicts an 80 square foot energy dissipater at the terminus of the two pipes. 98-LUS-469 depicts a substantial energy dissipater at the terminus of the two drainpipes and the swale that consists of a 210 square foot energy dissipater with two cascade weirs of approximately 60 feet in width and two feet in height. Additionally, a four foot wide, fourteen inch deep roadside “V” ditch was depicted along Mountain Drive to an existing inlet 100 feet to the east.

Based on these significant differences between the two version of the permit it is staff’s contention that the driveway as it exists today was not constructed in accordance with the plans approved under 97-LUS-509 and the two subsequent revisions. It is important to note that 98-LUS-469 was submitted after 97-LUS-509 and most closely approximates what exists on the property today.

2. *The revised land use plan was properly approved by County staff.*

Staff response:

On October 2, 1998, the Deputy Director for the Zoning Administration Division formally revoked the Land Use Permit 97-LUS-509 after determining that the revisions approved on July 7, 2002 did not comply with the criteria of Appendix C of Article IV, Revisions to Land Use and Coastal Development Permits.

Staff believes that the reasons stated in the Planning Commission’s permit denial aptly explains why the issuance of the second revision was in error. With regard to the revocation procedure, the project did not meet two key criteria cited in Appendix C. The first criterion requires that a permit cannot be issued if the project has been the subject of neighborhood controversy. The project was subject to neighborhood controversy prior to the initial application being submitted due to grading occurring in advance of a permit. In addition, during the appeal period the applicant reached an agreement with the adjoining property owner agreed to incorporate the extension of a flood wall thirty feet onto neighbors property into the approved plans. The agreement was struck in exchange for the neighbor not appealing the approved permit. During the intervening time from the issuance of the permit on January 13, 1998, to the time the second revision was approved on July 7, 1998, there were several complaints received from neighboring property owners.

The second criterion requires that a project would otherwise be exempt from a Land Use Permit. A retaining wall in the Article IV Zoning Ordinance is not cited as an exempt activity. In Articles II, and III a retaining wall of four feet or less (including height of the footing) is specifically listed as being exempt from a Land Use Permit.

It appears that there is some question whether or not Zoning Administration staff fully understood the scope of the change that was approved under the revision. In Mr. Harmer's declaration (exhibit 3) he states that he had the contractor revise the plan as follows: a) A note was provided that the retaining wall would not exceed 6 feet in height; b) Notations were added showing top of wall elevations along the retaining wall; c) Notation was added that it was being constructed pursuant to Figure 3 on the approved plans (a detail being used for the motor court retaining wall and backfill) and a table which specified the amount of backfill. While this is true, it should be noted that the plans were not modified to show an increase in the elevation of the driveway in the section drawings (sections A through D on the plans), they continued to depict a slope on the eastern side of the driveway, not a retaining wall, and there was no corresponding increase in the grading quantities represented on the plans. It appears that Zoning Administration staff did not understand the full scope of the change they were approving, because the revision stamp contains the notation "original approved grading adding retaining wall max height of 6 feet." If Zoning staff had completely understood the scope of the project they would not have made the notation "original approved grading."

3. The County is estopped from revoking the revised land use permit upon which Mr. Lambert relied in good faith in completing the driveway project.

The following principles apply to an analysis of the application of the doctrine of estoppel. It is a basic principle that estoppel will not be applied against a government entity if to do so "would nullify a strong rule of policy, adopted for the benefit of the public ..." (*County of San Diego v. California Water and Electric Co.* (1947) 30 Cal.2d 817, 829-830.) Planning and zoning ordinances are considered vital to the public interest. (*Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 822.) The doctrine of estoppel against the government is to be narrowly construed and applied in only extraordinary cases. (*City of Long beach v. Mansell* (1970) 3 Cal.3d 462, 500; *Smith v. County of Santa Barbara* (1992) 7 Cal.App.4<sup>th</sup> 770, 771; *La Canada Flintridge Development Corp. v. Department of Transportation* (1985) 166 Cal.App.3d 206.)

"[A]n estoppel will not be applied against the government where it will effectively nullify a strong rule of policy, adopted for the benefit of the public ... [¶] Courts will invoke the equitable estoppel doctrine against the government in rare circumstances. When considering the application of the doctrine with respect to zoning laws and permits, courts must balance the individual's interest against the interest of the public and the community in preserving the community patterns established by zoning laws.... To hold that the City can be estopped would not punish the City but it would assuredly injure the area residents, who in no way can be held responsible for the City's mistake.... [T]he public interest will generally outweigh any injustice to the individual which may result from relying upon an invalid permit to build issued in violation of zoning laws...." (*County of Sonoma v. Rex* (1991) 231 Cal.App.3d 1289, 1295-1296, internal quotation marks omitted.)

Here, there is no evidence that the public interest in enforcing the policies and standards of the Montecito Community Plan, including procedures to ensure appropriate public notice and review of proposed permit revisions, are outweighed by injustice to the applicant arising from his alleged reliance on the revoked permit revision.

Moreover, as the Court of Appeal held in *Smith v. County of Santa Barbara*, there can be no estoppel where there is no reliance on an erroneously issued permit. In *Smith*, the Court rejected the County's attempt to estop itself from revoking an erroneously issued land use permit to install three microwave dishes because of the absence of reliance on that land use permit. There, the telephone communications company did not build in compliance with the three-dish system permit to construct its five-dish project. The Court found there could be no reliance on the three-dish permit in light of permit plans the company had submitted to build five microwave dishes. Similarly, as discussed in this staff report, the applicant did not build his driveway in compliance with the revoked permit. And, as in *Smith*, he also submitted as-built plans showing no reliance.

The applicant commenced driveway grading in the summer of 1997 without any permits. After a correction notice was issued in August 1997, he continued work in the field before the original 97-LUS-509 was issued. In June 1998, correction notices were again issued when he began constructing formwork for the retaining wall along the east side of the driveway, and relocated the retaining wall for the motor court further to the north, increasing the cut into the hillside to fourteen feet. After stop work orders were issued in July 1998, the applicant continued to grade his driveway. In September 1998, the Building Official issued Orders to abate the fourteen foot vertical cut at the rear of the property and to complete drainage modifications according to required engineered plans to correct non-permitted disturbances to drainage patterns and systems. Finally, by the time the Zoning Administrator revoked the revision to 97-LUS-509, staff had determined from its August 17, 1998 site visit that the applicant had not built in compliance with the revised 97-LUS-509. As in *Smith, supra*, this is clearly established by plans submitted by the applicant that show material differences between the erroneously revised 97-LUS-509 and the as-built plans submitted by the applicant in 98-LUS-469.

In support of his arguments, the applicant has argued that he relied on direction given in the field by the grading inspector. This is contradicted by the evidence above. Moreover, it should be noted in testimony given by the County Building Official before the Planning Commission on May 17, 2000 (please refer to exhibit 2.a. for complete excerpt), that "the grading inspector does not direct the field operations of the contractor." Mr. Breckenridge went on to state that even if changes occurred in the field that the inspector didn't catch, "that would not signify approval by the County."

County field inspectors do not have the authority to approve modifications of County land use permits. Mr. Harmer cannot usurp this Board's authority. (*See Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1450 ("the general rule is that the government is neither bound nor estopped by the acts of its agents"); *Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 47-53 (government has no duty to shepherd application through development process and cannot be estopped by statements of staff.) Furthermore, a developer cannot ordinarily rely on erroneous statements by County employees regarding the applicability of a regulation. (*See SM Investment Co. v. Tahoe Reg. Plan Agency* (9<sup>th</sup> Cir. 1990) 911 F.2d 324, a property owner is presumed to have known the law when dealing with the government; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4<sup>th</sup> 1472, owner has no right to continue nonconforming use based on incorrect approval by city employee.)

As our Court of Appeal found in *Smith v. County of Santa Barbara*, staff believes this is not an extraordinary case in which to apply estoppel.

4. *Denial of Mr. Lambert's appeal on the grounds that his driveway project violates County policies would deny him his constitutional rights to equal protection in that it would clearly be applying a different standard than has been applied to the immediately adjacent property at 900 Hot Springs Road, which the County approved development for Bobby Webb.*

Any legal lot within the County is allowed reasonable development if services can be provided (i.e. water, sanitary service and access). Reasonable development of a lot usually consists of a primary residence, associated access and parking. Other development such as accessory structures (i.e. pools, cabanas, trellis, etc.) may be permitted if there is available area to develop and is consistent with the County's Comprehensive Plan, applicable community plan, and zoning ordinance. The project site is currently developed with a single-family dwelling, detached garage and a driveway that affords access to the site from Hot Springs Road. The applicant stated for the record that the primary access to the project site is addressed from Hot Springs Road. Therefore, the driveway that is the subject of this appeal is technically considered a secondary access. Therefore, because the driveway is a secondary access it is not considered to be necessary to the function of the primary use of the site, and is therefore an ancillary use. Therefore, staff does not believe that an argument can be made that the applicant is denied from enjoying their property in same manner as their neighbor since they have both been allowed a primary access and are both enjoying reasonable development of the project site.

*99-LUS-506 MO, 99-LUS-526 MO, and 99-LUS-585 MO:*

*The three permits should have been approved because at the time of submittal there was no zoning violation that existed on the property. The permits were submitted prior to the Board's denial of 98-LUS-469, and at the time the Board denied 98-LUS-469 the Board directed the applicant to cure the zoning violation on the property by April 26, 2000.*

While the applications were submitted prior to the Board's October 26, 1999 decision on 98-LUS-469, after the Board denied 98-LUS-469, the property was no longer in compliance with all rules and regulations of the County. Therefore, the required finding for a Land Use Permit that no zoning violation exists on the property could not be made and these other permits could not be issued until the driveway was legally permitted in some form. With the as-built improvements that remain on site denied by the Board, no land use permits could be issued on the project site without permits issued specifically for curing the current zoning violation.

**Mandates and Service Levels:** Pursuant to Section 35-327.3 of Article III of Chapter 35 of the County Zoning Ordinances, the decisions of the Zoning Administrator may be appealed to the Board of Supervisors within ten days of the date of the Zoning Administrator's action.

**Fiscal and Facilities Impacts:** A fee of \$2,000.00 per appeal was collected for an applicant appeal. This is enough to cover a portion of staff time devoted to the processing of the appeal. However, the County is funding additional costs associated with the processing of these appeals.



**Special Instructions:**

Clerk of the Board shall forward a copy of the Minute Order to P&D, Hearing Support Section, Attn: Cintia Mendoza.

Planning & Development will prepare final action letter and otherwise notify all concerned parties of the Board of Supervisors' final action.

**Concurrence:**

County Counsel

**Attachments:**

**A. 97-LUS-509**

- Exhibit 1: Planning Commission Staff Report dated May 8, 2000, for hearing of May 17, 2000
- Exhibit 2: Planning Commission Action Letter dated May 26, 2000
- Exhibit 2.a: Excerpt of Testimony by Frank Breckenridge, Building Official, May 17, 2000
- Exhibit 3: Declaration of Peter Harmer dated August 2002
- Exhibit 4: Notice and Order Letter from Frank Breckenridge dated September 24, 1998
- Exhibit 5: Stop Work Order Letter from Noel Langle dated August 18, 1998
- Exhibit 6: Revocation Letter from Noel Langle dated October 2, 1998
- Exhibit 7: Appeal to the Board of Supervisors dated May 30, 2000
- Exhibit 8: Site Plan

**B. 99-LUS-585, 99-LUS-506, 99-LUS-525**

- Exhibit 9: 99-LUS-585, 99-LUS-506 Planning Commission Action Letter dated July 31, 2000
- Exhibit 10: 99-LUS-525 Planning Commission Action Letter dated July 31, 2000
- Exhibit 11: Appeal to the Board of Supervisors

**B. 98-LUS-469 (Historical Information)**

- Exhibit 12: Board of Supervisors Action Letter dated
- Exhibit 13: Site Plan