

## **ATTACHMENT 1: FINDINGS FOR DENIAL**

### **1.0 CEQA FINDINGS**

The Board of Supervisors finds that CEQA does not apply to the denial of the appeal pursuant to CEQA Guidelines Section 15270 [Projects Which are Disapproved]. See Attachment 2, CEQA Notice of Exemption.

### **2.0 ADMINISTRATIVE FINDINGS**

In order for a Land Use Permit for new development to be approved, the proposed development must comply with all applicable requirements of the County Land Use and Development Code and policies of the County Comprehensive Plan. As proposed, the following required findings in the County LUDC cannot be made. Only findings that cannot be made are discussed below:

#### **2.1 LAND USE PERMIT FINDINGS**

**A. Findings required for all Land Use Permits.** In compliance with Subsection 35.82.110.E.1.1.a of the County Land Use and Development Code, prior to the approval or conditional approval of an application for a Land Use Permit the review authority shall first make all of the following findings:

**1. The proposed development conforms to the applicable provisions of the Comprehensive Plan, including any applicable community or area plan.**

The project is not consistent with the applicable policies of the Comprehensive Plan, including the Toro Canyon Plan and therefore this finding cannot be made. Specifically, the proposed project does not conform to the following policies and development standards of the Toro Canyon Plan: Policy BIO-TC-1, DevStd BIO-TC-1.4, Policy BIO-TC-7, DevStd BIO-TC-7.4, DevStd BIO-TC-7.8, Policy BIO-TC-11, DevStd BIO-TC-12.1, Policy BIO-TC-13, DevStd BIO-TC-13.1, and DevStd BIO-TC-13.2. The project's inconsistency with the Comprehensive Plan, including the Toro Canyon Plan, is discussed in Sections 5.3, 6.1, 6.2, 6.3, and 6.4 of the County Planning Commission staff report dated July 21, 2016 (Attachment 5 of Attachment 9 to Board Agenda Letter for the July 17, 2018 hearing), incorporated herein by reference, and in the Appeal Issues section of the Board Agenda Letter for the November 22, 2016 Board hearing (Attachment 9 of the Board Agenda Letter for July 17, 2018), incorporated herein by reference.

The Toro Canyon Plan includes a number of policies and development standards that provide direction regarding biological resources. The list below summarizes the biological resource policies most applicable to the project.

- Policy BIO-TC-1 requires Environmentally Sensitive Habitat (ESH) areas to be protected and, where appropriate, enhanced.
- DevStd BIO-TC-1.4 (INLAND) requires development to include the buffers from EHS boundaries as follows: Coast Live Oak Forests - 25 feet from edge of canopy; Southern Coast Live Oak Riparian Forest corridors - 100 feet in Rural areas, as measured from the top of creek bank and where habitat extends beyond the top of creek bank, the buffer is extended an additional 50 feet in Rural areas from the outside edge of the Southern Coast Live Oak Riparian Forest canopy.
- Policy BIO-TC-7 (INLAND) requires development avoid ESH and ESH buffer areas to the maximum extent feasible.
- DevStd BIO-TC-7.4 (INLAND) requires development to be sited and designed at an appropriate scale, including total areas of paving, motorcourts and landscaping, etc., to avoid disruption and fragmentation of biological resources in ESH areas, avoid or minimize removal of significant native vegetation and trees, preserve wildlife corridors, minimize fugitive lighting into ESH areas, and redirect development runoff/drainage away from ESH.
- DevStd BIO-TC-12.1 requires development not interrupt major wildlife travel corridors, including oak riparian forest.
- Policy BIO-TC-13 requires preservation of native trees.

The development would be located directly within designated Environmentally Sensitive Habitat along Toro Canyon Creek, including riparian and oak woodland habitat. As evident during staff site visits and confirmed via historical aerial imagery and photos included in the Planning Commission staff report dated July 21, 2016 and the Board Agenda Letter for the November 22, 2016 hearing, (Attachment 9 of the Board Agenda Letter for July 17, 2018), incorporated herein by reference, native vegetation including trees within the ESH area were removed during unpermitted grading activities, prior to submittal of the Land Use Permit. After reviewing submitted materials, including biological reports (KR&EC, Impact Science), arborist report (K. Knight), restoration/fuel management plan (KR&EC), and county-contracted peer review (Storrer Environmental Services), conferring with CA Department of Fish and Wildlife and Central Coast Regional Water Quality Control Board staff, and conducting the site visits, P&D staff also concluded that completion of the access road and bridge would result in additional removal and long-term reduction (through fuel modification

along the road) of native vegetation including trees, and would disrupt and fragment biological resources in the ESH, including a riparian wildlife corridor.

The project has an existing usable, legal, permitted, primary access road that meets County and Carpinteria-Summerland Fire Protection District access requirements and the existing primary access was approved to serve the Myers' parcel and two adjacent parcels (one of the adjacent parcels is developed). Since the primary access road was approved, neither the County nor Carpinteria-Summerland Fire Protection District have required provision of a secondary access nor has either agency required secondary access for other similarly situated properties in Toro Canyon. This is consistent with existing access regulations, which do not normally trigger a requirement for secondary access unless a project involves creation of at least five lots. As noted above, the existing approved primary access road serves less than five lots. It is acknowledged that additional roads provide additional options for ingress and egress. However, the existing access setting has provided safe and adequate access to and from the property, for residents and emergency responders, including during the Thomas Fire, the largest fire in California history. The proposed secondary access road is located entirely within ESH and the biological issues associated with such development, including new roads, are discussed in the project MND and in the Toro Canyon Plan, both incorporated herein by reference. In addition, from a practical standpoint, County Fire has indicated that the existing primary access road would be their preferred access route onsite. This is due, in part, to the presence of dense vegetation/extensive tree canopy along and over the proposed secondary road route. For the reasons identified below, the project would not be consistent with Toro Canyon Plan policies and development standards:

- The project is confirmed to be located entirely within designated EHS area;
- Comprehensive Plan policies and development standards, including area specific guidance in the Toro Canyon Plan, require avoidance of grading and construction in ESH areas to the maximum extent feasible. Since adequate access already exists, there is no justification to degrade ESH in conflict with these policies;
- The property is served by an existing, permitted, viable, primary access road, the approved access for onsite development;
- When the development was approved onsite in 1997, there was no requirement for secondary access;
- The Carpinteria Summerland Fire Protection District (CSFPD) is supportive of construction of the proposed secondary access road. However, neither CSFPD nor the County currently require a secondary access for this property or similarly situated properties;
- In an email dated March 3, 2016, County Fire Marshal (Steve Oaks) confirmed that the County would use the existing primary access and not the proposed secondary access in the event of a fire;

- One reason for the secondary access is that the property owner has had conflicts with the adjacent landowner, including claims that the adjacent owner has blocked or partially blocked this access road with construction equipment, inhibiting use of the road. As blocking any legal access is illegal, this situation can be remedied without the need to construct a new road;
- Structures onsite are specifically designed for sheltering in place during a wildland fire, meaning this property may have substantially less need for emergency egress in a fire event than would other similarly located properties;
- Nearly the entire length of the secondary access route is covered by riparian and oak woodland tree canopies, whereas the existing primary access road is not covered by tree canopy, making it a safer route during a fire event;
- Secondary access is required for subdivisions in Toro Canyon involving five or more new lots. The existing primary access road serves only three lots, two of which are developed.
- Vehicles using the proposed secondary access road would exit the property approximately 250 feet (less than 0.05 miles) north of the existing primary access driveway on the same public road (Toro Canyon Road). Therefore, the secondary access road does not provide an alternative route out of the project area, as vehicles would exit the property in nearly the same location on Toro Canyon Road as the existing primary access;
- Vehicles using the proposed secondary access road would exit the property further up the canyon, the opposite direction of likely escape from a wildfire.

In this instance, there is insufficient justification to allow construction of a bridge and road in designated Environmentally Sensitive Habitat in conflict with numerous policies of the Toro Canyon Plan. Therefore, the project would be inconsistent with the above-noted Toro Canyon Plan standards and this finding cannot be made.

**B. Additional findings required for sites zoned Environmentally Sensitive Habitat Area Overlay - Toro Canyon (ESH-TCP).**

- 1. All projects.** In compliance with Subsection 35.28.100.E.3 of the County Land Use and Development Code, prior to the approval or conditional approval of an application for a Land Use Permit the review authority shall first find that the proposed project complies with all applicable biological resource policies and development standards in the Toro Canyon Plan.

As discussed in Finding A.1 above, incorporated herein by reference, the proposed project does not comply with the following biological resource policies and development standards in the Toro Canyon Plan: Policy BIO-TC-1, DevStd BIO-TC-1.4, Policy BIO-TC-7, DevStd BIO-TC-7.4, DevStd BIO-TC-7.8, Policy BIO-TC-11, DevStd BIO-TC-12.1, Policy BIO-TC-13, DevStd BIO-TC-13.1, and DevStd BIO-TC-13.2. Therefore, this required finding cannot be made and the proposed development associated with Land Use Permit 16LUP-00000-00109 cannot be approved.