



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: February 5, 2013
Placement: Departmental
Estimated Tme: 60 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director: Glenn Russell, Ph.D., Director, Planning & Development 568-2085
Contact Info: Alice McCurdy, Deputy Director, Development Review
568-2518
SUBJECT: Naples Coalition Appeal (Case No. 12APL-00000-00018) of the Planning
Commission Approval of the Schulte/Dos Pueblos Lot Line Adjustment Project
(Case No. 10LLA-00000-00003), 3rd Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

On February 5, 2013, your Board should consider the following actions:

1. Deny the appeal, Case No. 12APL-00000-00018, thereby affirming the County Planning Commission's approval of the project;
2. Make the required findings for approval of the project, (Case No. 10LLA-00000-00003) specified in Attachment 4 of this Board Letter, including the California Environmental Quality Act (CEQA) findings.
3. Consider the environmental review documents [Addendum dated October 17, 2012 included as Attachment 5 of this Board Letter] together with the previously certified Environmental Impact Report 04EIR-00000-00014, determine that, as reflected in the CEQA findings, no subsequent Environmental Impact Report or Negative Declaration shall be prepared for this project.
4. Grant *de novo* approval of Case No. 10LLA-00000-00003, subject to the conditions specified in Attachment B of the Planning Commission action letter dated November 15, 2012 (Attachment 3 of this Board Letter).

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

The project site includes properties located at 100-695 Dos Pueblos Canyon Road in the Gaviota area, 3rd Supervisorial District.

Background:

The Schulte/Dos Pueblos Lot Line Adjustment project was approved by the County Planning Commission on November 7, 2012 by a vote of 5 to 0. The Planning Commission Staff Report dated October 8, 2012 is included in this Board Letter as Attachment 1 and the action letter reflecting the Planning Commission's action is included in this Board Letter as Attachment 3. The appellant, Marc Chytilo representing the Naples Coalition, timely appealed the Planning Commission's approval of the project to your Board on November 19, 2012.

In accordance with Board Resolution 95-462, on November 27, 2012, County Counsel offered the County's voluntary facilitation process to the applicant and appellants. The facilitation was declined.

Project Description:

The project is a request to adjust the lot lines between a 1,977.50-acre lot (Existing Lot A) and an adjoining 76-acre lot (Existing Lot B). The proposal would take 1617.5 acres from one parcel (Existing Lot A) and add it to an adjoining parcel (Existing Lot B), and would result in a 1,693.50-acre lot (Proposed Lot 1) and 360-acre lot (Proposed Lot 2). Existing Lot A currently consists of a portion of APN 079-060-066 and all of APN 079-080-021, APN 079-090-030 and APN 081-240-018. Existing Lot B currently consists of a portion of APN 079-060-066. The proposed Lot Line Adjustment would result in two lots that comply with the applicable minimum lot size of the AG-II-100 zone district. The subject lots are zoned AG-II-100 under the County Land Use and Development Code and Coastal Zoning Ordinance and are located at 100 – 695 North Dos Pueblos Canyon Road, Gaviota Area, Third Supervisorial District.

Appeal Issues:

In its appeal dated November 19, 2012, the Naples Coalition argues that the lot line adjustment under appeal is linked, as a project, to the Santa Barbara Ranch project. On that basis, the appeal identifies several issues including inadequate findings and inadequate CEQA compliance. The appeal letter also incorporates by reference letters submitted previously by the Naples Coalition to the Agricultural Preserve Advisory Committee (APAC) dated October 2, 2012 and to the Planning Commission dated October 15, 2012 and November 2, 2012. Each of the issues raised by the appellant in these four letters is discussed in more detail below with staff's corresponding responses.

1. Project Cannot be Considered Independent from the Santa Barbara Ranch Project

“The contention that this is an isolated project that cannot recognize or consider the relationship with the 2008 tentative subdivision approval (Santa Barbara Ranch) is simply incorrect, and in our view, the County must consider and make findings that explains the relationship between the two projects, since they affect the same lands and envision completely different and entirely incompatible uses of these same lands.” - (Marc Chytilo letter to Board of Supervisors dated November 19, 2012)

Staff response:

The appellant is correct in stating that the current lot line adjustment project involves some of the property that was analyzed in the Santa Barbara Ranch project (SBR) which was approved in 2008 by the Board of Supervisors. More specifically, the boundaries of Proposed Lot 2 resulting from the subject lot line adjustment are identical to the exterior boundaries surrounding the cluster of residentially

developable lots created by the Tract Map included in the approved Santa Barbara Ranch Alt 1B project. However, the subject lot line adjustment is independent from the Santa Barbara Ranch project and will not act to advance the Santa Barbara Ranch project because the lot line adjustment would not allow for the further subdivision of lots within the exterior boundary as would the SBR tract map. As such, the clustered residential development approved under the SBR Alt 1B project could never be realized under the approval of the lot line adjustment itself. Moreover, the Santa Barbara Ranch project can be realized through satisfaction of its conditions of approval, regardless of the subject lot line adjustment. The purpose of the lot line adjustment is to facilitate a prospective change in ownership of the underlying land and may be approved by your Board regardless of whether or not the Santa Barbara Ranch project is eventually carried out by the developer. Because the projects are independent from each other, findings called for in the appellants' letters, that relate the projects to each other, are neither legally relevant nor required.

2. *Agricultural Viability, Replacement Agricultural Preserve Contracts & Lack of Consistency with the County's Uniform Rules*

"Agricultural lands preservation on these lands is dependent on the on-going Williamson Act contract and concomitant agricultural production (of which only the first fact is presumptively established by imposition of Condition #2 that the owner will apply for and record a Williamson Act contract), while there is no evidence on the record regarding how a subsidiary of an out of state bank intends to conduct viable, sustaining agricultural production activities on the site." - (Marc Chytilo letter to Planning Commission dated November 2, 2012)

"...(we) believe these maps and the oral commitment to include other specific areas in the Williamson Act replacement contract should be part of the materials before the Planning Commission and the public for review before the hearing...We believe this is information that is germane to a set of highly controversial parcels of land and it is reasonable to have such information available before the hearing." - (Marc Chytilo letter to Planning Commission dated October 15, 2012)

"...the proposed lot line adjustment fails to comply with the requirements of the County's Uniform Rules and must be rejected on those grounds...There is no evidence, and it appears that the Landowners' intentions are not to maintain the Williamson Act contract in place for the period required by the Uniform Rules (minimum of 10 years)". - (Marc Chytilo letter to the Agricultural Preserve Advisory Committee dated October 2, 2012)

Staff response:

Existing lots A and B, along with adjacent lands not included in the proposed lot line adjustment, are currently under one Williamson Act Contract, 77-AP-14. 77-AP-14 includes other land in addition to the parcels included in the lot line adjustment. Consistent with Uniform Rule 3 governing Williamson Act contracts and pursuant to condition of approval 2 of the lot line adjustment, the County and the property owners would be required to mutually agree to rescind the existing agricultural preserve contract, 77-AP-14, and simultaneously enter into a new contract or contracts concurrent with recordation of the lot line adjustment. During the public hearing on October 5, 2012, the Agricultural Preserve Advisory Committee (APAC) reviewed the proposed lot line adjustment, found the project consistent with the County's Uniform Rules, provided that the replacement contracts are applied, approved and recorded prior to or at the time of recordation of the lot line adjustment. The replacement contracts will roll annually with an initial 10-year time frame. By recording replacement Williamson Act contracts concurrently with the lot line adjustment, ongoing participation of the subject lands in the Williamson Act, and therefore, ongoing use of the subject lands for agriculture, would be assured.

On November 16, 2012, applications for replacement Williamson Act contracts for the lands included in the subject lot line adjustment were submitted independently by Dos Pueblos Ranch Holdings, LLC (Case No. 12AGP-00000-00028) and SBRHC, Inc. (Case No. 12AGP-00000-00029). Two separate replacement contracts were submitted reflecting the two different eventual ownerships after the lot line adjustment is recorded. When considered in concert, the two replacement contracts cover all of the lands included in the subject lot line adjustment as well as the lands currently included under the existing Williamson Act contract, 77-AP-14. The replacement Williamson Act contracts would be reviewed by the APAC at a future hearing for consistency with the Uniform Rules but not prior to your Board's consideration of the lot line adjustment appeal on February 5, 2013. After review by the APAC, the replacement contracts must go to the Board of Supervisors for approval. Staff will update your Board regarding the status of the replacement contracts during their presentation on February 5th. The replacement contract applications and all associated documents are located in the offices of Planning & Development and are available for review by the public.

Numerous findings made by the Planning Commission and included in its November 15, 2012 action letter including administrative findings 2.1.B.1 – 8, 2.2.B.1 – 7 and 2.3.B.1 – 8, incorporated herein by reference, contain substantial evidence supporting the ongoing agricultural viability of the subject lands after recordation of the proposed lot line adjustment and replacement Williamson Act contracts. Meanwhile, the current property owner is leasing and has leased the lands in question for a number of years to a local cattle rancher. Evidence of rent checks was provided to the APAC during the October 5, 2012 hearing and to the Planning Commission during its October 17, 2012 demonstrating how the property owner intends to sustain agricultural production on the subject lands. In order to support the de novo appeal, the Board of Supervisors must also make the same findings as updated in Attachment 4 of this Board Letter.

3. Inadequate CEQA Compliance

“...the Board may not rely on the addendum simply referencing the FEIR (Final Environmental Impact Report for the Santa Barbara Ranch Alt 1B project), since this project variation was not considered in that FEIR”. - (Marc Chytilo letter to Board of Supervisors dated November 19, 2012)

The appellant states that the 20-acre avocado orchard located just north of Highway 101 “has failed, as noted from the highway” and argues that because the orchard was discussed in the Santa Barbara Ranch EIR as providing visual screening of the SBR development as seen from the highway, that its failure constitutes a change in circumstance. – (Marc Chytilo letter to the Board of Supervisors dated November 19, 2012)

Staff response:

The current lot line adjustment project involves some of the property that was analyzed in the Santa Barbara Ranch project which was approved in 2008 by the Board of Supervisors. More specifically, the boundaries of Proposed Lot 2 resulting from the subject lot line adjustment are identical to the exterior boundaries surrounding the cluster of residentially developable lots created by the Tract Map included in the approved Santa Barbara Ranch Alt 1B project. The FEIR, certified by the Board of Supervisors for the Santa Barbara Ranch Alternative 1B project, includes specific analysis of the Alternative 1B project in the form of a “Confirming Analysis Alternative 1B” document that was provided to the Planning Commission on August 13, 2008 and incorporated into the FEIR as part of the Board's eventual certification. The FEIR also contains analysis of continued agricultural use of the lands. In order to address environmental analysis for the proposed lot line adjustment, staff prepared an Addendum pursuant to CEQA Guidelines Section 15164 to the Environmental Impact Report (04EIR-00000-00014)

for the Santa Barbara Ranch project. The Addendum for the current project is included as Attachment 5 to this Board Letter.

While a small portion of the southeast corner of the orchard has experienced root rot, the majority of the orchard remains healthy and continues to screen views of the SBR development area as seen from the highway (personal observation, Errin Briggs, January 2013). Page 9.9-6 of the FEIR actually states “views from several segments of the freeway are blocked entirely either by cut slopes adjacent to the roadway or by older dense vegetation consisting of orchards, eucalyptus groves or older windrows.” Because the orchard continues to screen views of the SBR development area and the visual analysis included in the FEIR depends upon other existing physical features to screen views from the highway in addition to the orchard, there is no change in circumstances with respect to the visual impacts analysis in the Santa Barbara Ranch project EIR.

As noted in the project description, the proposed lot line adjustment does not include any physical development or result in any change in development potential or changes in use of the subject property. Because none of the requirements for preparation of a subsequent EIR listed in CEQA Guidelines Section 15162 are triggered by the proposed project, preparation of an Addendum is appropriate and fully adequate for the purposes of fulfilling CEQA requirements for the current project. None of the following have occurred with respect to the project studied in the Santa Barbara Ranch EIR: no substantial changes are proposed in the project that will require revisions to the previously certified Santa Barbara Ranch EIR, no substantial changes have occurred with respect to the circumstances under which the project is undertaken; and there is no new information of substantial importance.

4. Lack of Evidence to Support Findings

“The findings rely on facts not in evidence in this proceeding, sub-conclusions are absent, and the ultimate decision is presented as a *fait accompli*. The findings themselves do not recite to the specifics of this case.” - (Marc Chytilo letter to Planning Commission dated November 2, 2012)

Staff response:

The project findings, presented to your Board at this *de novo* hearing, address the current lot line adjustment project and are supported by substantial evidence. The appellant contends that your Board needs to make findings that link this project to the approved Santa Barbara Ranch project. However, the current lot line adjustment project is a separate project independent from the Santa Barbara Ranch project. The CEQA and administrative findings included as Attachment 4 of this Board Letter are legally adequate to support approval of the proposed lot line adjustment, the only project before your Board. The findings are based on substantial evidence presented in the record including information provided in the applicant’s lot line adjustment application, the applicant’s Agricultural Preserve replacement contract applications under Case Nos. 12AGP-00000-00028 and 12AGP-00000-00029, testimony and evidence provided during the APAC hearing on October 5, 2012, and testimony and evidence provided during the Planning Commission hearings of October 17 and November 7, 2012 the Addendum dated October 17, 2012 and the Final Environmental Impact Report (04EIR-00000-00014) adopted by the Board of Supervisors for the Santa Barbara Ranch project.

5. Existing Infrastructure Not Identified and Zoning Violations not Addressed

The appellant states that Chapters 21 (Subdivision Regulations) and 35 (Zoning) of the County Code require lot line adjustment applications to include specific information about the subject properties such as the location of existing and proposed roads, infrastructure, easements, buildings, water wells, etc. The appellant asserts that “The absence of this information prevents decision-makers and the public from knowing whether in fact the houses identified actually conform to setback requirements, and if they are

part of the illegal and potentially substandard housing that the County is aware exists on the Dos Pueblos Ranch.” - (Marc Chytilo letter to Planning Commission dated November 2, 2012)

Staff response:

As part of the lot line adjustment application, the applicant provided a site plan, included as Attachment 8 to this Board Letter, depicting the boundaries of the subject parcels and identified the locations of existing structures including five existing farm-employee dwellings located on Existing Lot A, as well as existing easements affecting both existing lots. The site plan also shows the locations of existing reservoirs which serve the ongoing agricultural activities on the subject lands. It is correct that the application does not include information regarding water systems and infrastructure, the width and radii of existing roadways and notations for setbacks. Because the proposed project is for a lot line adjustment only and does not include physical development of any kind, and the information was provided for the map associated with Santa Barbara Ranch and analyzed in the FEIR, information such as setbacks and water delivery systems was not necessary to review the current proposal for conformity with County policies and regulations.

With respect to the “illegal and potentially substandard housing” the appellant references, staff determined that these housing units are in fact located on adjacent properties and are not within the lots subject to the current lot line adjustment project. Further, Planning & Development staff conducted a site visit and found that no zoning or building violations are located on the subject properties as discussed in the project findings included as Attachment 4 of this Board Letter.

6. Coastal Resources Not Identified or Addressed

“A portion of the project is located in the coastal zone, including areas that once were and may today have riparian natural resources and environmentally sensitive habitat...it is clear that these lands include the relictual portions of Dos Pueblos Creek and which have a hydrological connection to the Naples Reef and associated Marine Protected Areas. These resources are neither identified nor analyzed, and consequently LCP consistency may not be found.” - (Marc Chytilo letter to Planning Commission dated November 2, 2012)

Staff response:

The majority of the subject property is located in the inland portion of the County. The appellant correctly states that a small portion (approximately 10,000 square feet) of the southern corner of Existing Lot A/Proposed Lot 1 is located within the Coastal Zone and is therefore subject to the requirements of the County’s Coastal Zoning Ordinance, Article II. However, the lot line adjustment project does not include any physical development, nor does it increase the development potential of either of the resultant lots or change use of the property. Therefore, the project would not result in any physical impacts on the environment. The resources the appellant refers to would not be affected by the project and therefore, the requested analysis is not necessary. CEQA findings for the current lot line adjustment project rely on an addendum to the Santa Barbara Ranch FEIR (included herein as Attachment 4) and the FEIR. The FEIR includes a detailed inventory and analysis of the site’s riparian natural resources and environmentally sensitive habitat in Chapter 9.4 (Biological Resources).

7. Lot Line Adjustment is Not Consistent with the Subdivision Map Act

“The Subdivision Map Act, Government Code Section 66412 allows the use of lot line adjustment procedures only when the parcel whose lot line is being adjusted is adjoining the new parcel. In this case it is not, because the existing Lot B is not next to, connected to or immediately adjacent to the Proposed Lot 2. Lot B is an isolated 76 acre parcel far removed from the Proposed Lot 2 by an (estimated)

thousand(s) of feet from the proposed new Lot 2. There are no common boundaries between these two lots.” - (Marc Chytilo letter to Planning Commission dated October 15, 2012)

Staff response:

The proposed project is consistent with the Subdivision Map Act. Under Section 66412(d), only the existing lots must adjoin each other and have a common boundary, as they do in this case. The appellant’s assertion above that the project is not consistent with the Subdivision Map Act was raised during the course of the Planning Commission’s consideration of the project at its October 17, 2012 and November 7, 2012 hearings. While the lot line adjustment as shown on the proposed map was not changed, the applicant did revise the written project description in response to this concern in order to clarify the project’s consistency with the Subdivision Map Act. More specifically, the description was revised to clarify that the proposal would take 1617.5 acres from one parcel (Existing Lot A) and add it to an adjoining parcel (Existing Lot B) and would result in a 1,693.50-acre lot (Proposed Lot 1) and 360-acre lot (Proposed Lot 2). With this clarification, the appellant’s assertion that the project is not consistent with the Subdivision Map Act has been nullified.

8. *The Application Omits Transfer of Ownership*

“The Uniform Rules plainly require the application for a new Williamson Act contract to protect the integrity of the County’s Williamson Act program upon conveyance of a portion of a parcel subject to a Williamson Act contract. New Williamson Act contracts are required, and if the transfer of ownership creates a parcel that does not qualify under the eligibility criteria, a notice of non-renewal should be recorded...” - (Marc Chytilo letter to the Agricultural Preserve Advisory Committee dated October 2, 2012)

Staff response:

Condition of Approval No. 2 would require the applicants to receive approval of replacement agricultural preserve contract(s) for 77-AP-014 and to record them concurrent with recordation of the requested lot line adjustment. The replacement contracts will roll annually with an initial, minimum 10-year time frame. Any transfer in ownership of the subject lands prior to recordation of the replacement contracts is immaterial, as long as that change in ownership is properly documented in the replacement Williamson Act contracts.

Fiscal Analysis:

For developments which are appealable to the Coastal Commission under Section 35-182.6 of the Coastal Zoning Ordinance, no appeal fee is charged. The proposed project is appealable to the California Coastal Commission due to a portion of the subject lands occurring in the Coastal Zone. No appeal fee was charged. The costs for processing appeals are provided through funds in P&D’s adopted budget. The total staff time for processing this appeal is estimated to be approximately 15 hours, or \$2,730. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-138 of the adopted 2012/13 FY budget.

Special Instructions/Noticing:

The Clerk of the Board shall fulfill all noticing requirements and publish a legal notice at least ten days prior to the hearing on February 5, 2013. The notice shall appear in the Santa Barbara News Press. Mailing labels for the mailed notice are attached. A Minute Order of the hearing shall be returned to P&D, Attention: David Villalobos, Hearing Support.

Attachments:

1. Planning Commission Staff Report dated October 8, 2012
2. Memo to the Planning Commission dated November 6, 2012
3. Planning Commission Action Letter dated November 15, 2012
4. Findings for Approval
5. 15164 CEQA Addendum
6. Naples Coalition Appeal Application and Supporting Documents
7. Santa Barbara Ranch FEIR is available on Planning & Development's website at <http://www.sbcountyplanning.org/PDF/projects/03DVP-00041/Public%20Review%20FEIR/TOC.pdf>
8. Lot Line Adjustment Site Plan
9. Evidence Supporting Active Agricultural Use of the Subject Lots
10. Agricultural Preserve Advisory Committee Minutes dated October 5, 2012

Authored by:

Errin Briggs, Planner, Planning & Development 568-2047

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