

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: November 1, 2004
Department Name: Planning and Development
Department No.: 053
Agenda Date: November 9, 2004
Placement: Departmental
Estimate Time: 2 hours
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If Yes, date from:
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TO: Board of Supervisors

FROM: Val Alexeeff, Director

STAFF

CONTACT: John Karamitsos, Supervising Planner (934-6255)
Brian Tetley, Planner (934-6589)

SUBJECT: Cargasacchi Appeal (03APL-00000-00022) of Planning Commission Approval of the Marks/Rancho Santa Rita Access Association Land Use Permit (00LUP-00000-06435) for Grading and Access Road Construction. APN 099-150-016, Lompoc area, Fourth Supervisorial District

Recommendation(s):

That the Board of Supervisors deny the appeal of John and Peter Cargasacchi, appellants, of the Planning Commission's February 23, 2003 vote to approve 00LUP-00000-06435.

Your Board's action should include the following:

1. Adopt the required findings for the project, included as Attachment D;
2. Approve the Land Use Permit as included as either:
 - Attachment B, the revised draft LUP (00LUP-00001-06435), if prior to the scheduled Board hearing, the applicant and appellant reach agreement on the issues of appeal through facilitation;
 - or
 - Attachment C, the Planning Commission approved LUP (00LUP-00000-06435), if the applicant and appellant do not reach consensus.
3. Deny the Appeal.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

Appeal to the Board of Supervisors. The subject appeal, filed by Mr. John and Peter Cargasacchi on February 6, 2004 (See Attachment A), contests the approval and issuance of a Land Use Permit for grading and development of an access road to be built to subdivision standards consistent with a recorded Memorandum of Understanding and Easement Location Document (See Attachment G). While the permit specifically addresses access to the partially constructed residence of Mr. Chris Marks (approved under 98-LUN-587), the subject permit would not provide for additional development on other Lakeview Estates parcels.

A. The bases for the appeal are as follows:

1. The necessary findings required under Chapter 35, Article III, Section 35-314.5 have not been made, and cannot be made and/or supported by substantial evidence in the administrative record.
2. The applicant is not the proper, authorized and required party under: a) CA Civil Code Section 1468; b) Chapter 14 Grading Ordinance, Section 14-12; and c) the Memorandum of Agreement and Easement Location Document.
3. The applicant has failed to comply with the Building and Safety condition letter, dated 12/04/00, which states "The property owner shall provide written authorization for you to perform the subject work on his property."
4. The permit does not comply with the requirements of the California Environmental Quality Act (CEQA).
5. The project is not consistent with the Land Use Element of the Comprehensive Plan.
6. The project is not consistent with requirements of the Memorandum of Agreement and Easement Location Document.
7. The project does not comply with the requirements of Resolution 86-93, "A Resolution Designating a Certain Area in the Santa Rita Mountains Between Sweeney Road and Mail Road as a "Special Problem Area"." Adopted on February 18, 1986.
8. The project is for the benefit of APN 099-200-070, the subject of prior LUP 98-LUN-587. While the subject permit under appeal corrects and addresses the access

requirements for the 98 LUP, it does not address or correct septic and water impacts caused by the prior approval.

B. The appeal specifically contests the following provisions contained in the approval of the subject LUP:

1. The Project Description inappropriately, and without authority: a) restricts and imposes conditions on the rights of other property owners under the easement; and b) attempts to substitute County of Santa Barbara discretion into the private road easement.
2. The LUP Attachment A regarding Consistency with the Memorandum of Agreement is not correct.
3. The following Conditions of Approval contained in LUP Attachment B are in error:
 - Condition 1, requiring establishment of a funding mechanism for construction and maintenance of the access road, is inconsistent with the requirements of CA Civil Code Section 1468, and alters the express conditions of the MOA by: 1) allowing an unauthorized third party to construct and maintain the road; and 2) failing to require the formation of an appropriate funding mechanism.
 - Condition 2, regulating the placement of any excess fill material, is not in conformance with the requirements of the MOA or the CA Civil Code.
 - Condition 3, regulating the location of the access road along the existing vineyard, is not authorized or approved by the parties of the MOA.
 - Condition 4, requiring re-surveying of the access road upon construction, is incorrect and not in conformance with the CA Civil Code.
 - Condition 5 (Note: Included as Condition of Approval 7 in the revised LUP), addressing water flow and drainage provisions across the access road, is forbidden by the MOA.
 - Condition 6 (Note: Included as Condition of Approval 9 in the revised LUP), requiring the placement of gates across the access road, does not meet the requirements of the MOA.

Facilitation Process. The facilitation process for the subject appeal began on March 11, 2004 when the appellants, the applicant, and County staff met and agreed to work together in resolving the issues associated with the completion of the Marks project consistent with the provisions of the MOA and not in conflict with the future development of the Lakeview Estates properties.

Due to the uncertainty of the outcome of facilitation at the time of finalizing this report, two versions of the proposed Land Use Permit are included (Attachments B and C), each of which is referenced in Recommendation 2 above. While the two parties have reached a tentative agreement, it has not been finalized to date. The LUP included as Attachment B is the result of the parties working together as part of the facilitation process, while the LUP included as Attachment C corresponds to the LUP approved by the Planning Commission on January 28, 2004. If the revised LUP is approved by your Board, all strikethrough and underlining used to track changes from the originally approved LUP.

Appeal to the Planning Commission. The appeal to the Planning Commission stated that the approval of Land Use Permit 00LUP-00000-06435 “constitutes an abuse of discretion for the following reasons: (a) P&D failed to make the necessary findings required by Section 35-314.5 of Article III of Chapter 35 of the Santa Barbara Code; and (b) the findings required by Section 35-314.5 may not be made and supported by substantial evidence in the administrative record as required by law” and that “The project conditions do not adequately satisfy the requirements of the Memorandum of Agreement, which agreement is specifically discussed in Exhibit A to the Land Use Permit, as required prior to the issuance of any Land Use Permit for the construction of the road.” Specific issues were discussed in the Planning Commission Staff Report (included as Attachment F).

On January 28, 2004, the Planning Commission denied the appeal and approved the Land Use Permit which had previously been approved by staff on November 26, 2003.

Land Use Permit Approval by Planning & Development. The subject LUP (included as Attachment D of the P/C Staff Report) was approved on 11/26/03 for the following project description:

Grading consisting of 6,590 cubic yards (5,020 cu.yds. cut / 1,570 cu.yds. fill) associated with the development of an 3,950 foot long access road, ranging in width from 16' (hillside) to 20' (level ground). Access road to be built to subdivision standards consistent with the recorded Memorandum of Understanding and Easement Location Document, recorded 03/16/90, and corrected survey (dated 06/07/03) contained in Exhibit D. The subject road is to provide access to only the new 7,476 sq. ft. Single Family Dwelling, 1,965 sq.ft. attached garage, 2,950 sq.ft. non-habitable basement, and 2,022 sq.ft. non-habitable attic on APN 099-200-070 (as approved under 98-LUN-587). This road shall not constitute approved access for any other development on any other parcel in the Lakeview Estates subdivision until such time that other parcel is a participant in an approved road maintenance agreement.

As proposed for approval, the details of this description would change based on the agreed upon relocation of the road. Final details would be indicated on the approved plans as part of LUP *issuance*.

Staff Response to the Items of Appeal. Considerable time and effort have been expended by the appellant, applicant, and County staff over the past 8 months in an attempt to resolve the issues surrounding the subject LUP and the future development of the Lakeview Estates subdivision.

In an attempt to allow Mr. Marks to complete construction of his residence, Mr. John Cargasacchi offered to enter into separate agreements relative to access and water well issues. As a result, legal binding agreements between these two parties have been created and are included as Attachments H and I to this Board letter. These agreements are discussed in further detail below.

In addition, cooperation between the appellant and applicant have resulted in a revised project description and conditions of approval. Five new conditions of approval have also been added.

The following discussion presents the staff response to each of the items identified in the Appeal to the Board of Supervisors, filed on February 6, 2004:

A. The appellant contends that:

1. The necessary LUP approval findings cannot be made and/or supported by substantial evidence in the administrative record.

STAFF RESPONSE: Please refer to the draft Findings contained as Attachment A of the Planning Commission Staff Report (included as Attachment F of this Board Letter).

2. The applicant is not the proper, authorized and required party under: a) CA Civil Code Section 1468; b) Chapter 14 Grading Ordinance, Section 14-12; and c) the Memorandum of Agreement and Easement Location Document.

STAFF RESPONSE: The referenced section of the Grading Ordinance specifies that the “application for a permit shall be made by the owner or lessee of the land upon which the grading, excavation or fill is to be made . . . “ While Mr. Cargasacchi is the owner of the subject land, the Memorandum of Agreement and Easement Location Document, recorded 03/16/90, provides for a non-exclusive easement and right of way for road purposes between SERVIENT and DOMINANT TENEMENT OWNERS.

3. The applicant has failed to comply with the Building and Safety condition letter, dated 12/04/00, which states “The property owner shall provide written authorization for you to perform the subject work on his property.”

STAFF RESPONSE: The facilitation process which has been undertaken since March, 2004 has been intended to address the concerns of the property owner in order to provide assurance that such authorization is appropriate. Prior to the appeals to the Planning Commission and your

Board, P&D staff have attempted to work with the appellant and applicant to ensure that the project is properly designed.

4. The permit does not comply with the requirements of the California Environmental Quality Act (CEQA).

STAFF RESPONSE: The proposed project has been deemed to be exempt from CEQA pursuant to Public Resources Code §21080(b)(1). Please refer to the Environmental Review discussion (Section 6.1, page 7) contained in the Planning Commission Staff Report (included as Attachment F of this Board Letter).

5. The project is not consistent with the Land Use Element of the Comprehensive Plan.

STAFF RESPONSE: The proposed project has been deemed consistent with Land Use Element Policies LUDP 4, and Hillside and Watershed Protection Policy 1 and 2. Please refer to the Comprehensive Plan Consistency Analysis discussion (Section 6.2, page 7) contained in the Planning Commission Staff Report (included as Attachment F of this Board Letter).

6. The project is not consistent with requirements of the Memorandum of Agreement and Easement Location Document.

STAFF RESPONSE: The facilitation process which has been undertaken since March, 2004 has been intended to address the concerns of both the SERVIENT TENEMENT OWNERS and the DOMINANT TENEMENT OWNERS. Prior to the appeals to the Planning Commission and your Board, P&D staff have attempted to work with the appellant and applicant to ensure that the project is properly designed. The appellant asserts that the DOMINANT TENEMENT OWNERS are not properly represented.

7. The project does not comply with the requirements of Resolution 86-93, "A Resolution Designating a Certain Area in the Santa Rita Mountains Between Sweeney Road and Mail Road as a "Special Problem Area"." Adopted on February 18, 1986.

STAFF RESPONSE: Throughout this process, considerable staff effort has been undertaken to address the concerns expressed in the resolution. Staff believes that the project, as approved by the Planning Commission, complies with the spirit and purpose of the earlier Special Problems Area designation.

8. The project is for the benefit of APN 099-200-070, the subject of prior LUP 98-LUN-587. While the subject permit under appeal corrects and addresses the access requirements for the 98 LUP, it does not address or correct septic and water impacts caused by the prior approval.

STAFF RESPONSE: As part of the facilitation process, the following legal documents have been prepared: 1) AGREEMENT TO RE-LOCATE WATER WELL EASEMENTS AND GRANT

NEW EASEMENTS; and 2) AGREEMENT TO A LIMITED INCREASE IN USE OF EASEMENT. These documents are included as Attachments H and I to this Board letter. Recordation of these documents would ensure that these issues have been addressed to the satisfaction of the appellant.

B. The appeal specifically contests the following provisions contained in the approval of the subject LUP:

1. The Project Description inappropriately, and without authority: a) restricts and imposes conditions on the rights of other property owners under the easement; and b) attempts to substitute County of Santa Barbara discretion into the private road easement.

STAFF RESPONSE: The facilitation process which has been undertaken since March, 2004 has been intended to address the concerns of both the **SERVIENT TENEMENT OWNERS** and the **DOMINANT TENEMENT OWNERS**. Prior to the appeals to the Planning Commission and your Board, P&D staff have attempted to work with the appellant and applicant to ensure that the project is properly designed. The appellant asserts that the **DOMINANT TENEMENT OWNERS** are not properly represented.

Note that the details of the proposed project (e.g., roadway length and width, earthwork volumes) would change upon redesign required by satisfaction of required Conditions of Approval.

2. The LUP Attachment A regarding Consistency with the Memorandum of Agreement is not correct.

STAFF RESPONSE: The subject Consistency discussion was provided by the applicant and attached to the LUP for informational purposes. The complete Memorandum of Agreement and Easement Location document, recorded 03/16/90, is included as Attachment G to this Board Letter. The appellant intends to submit additional information regarding consistency with this document under separate cover.

3. The following Conditions of Approval contained in LUP Attachment B are in error:

- Condition 1, requiring establishment of a funding mechanism for construction and maintenance of the access road, is inconsistent with the requirements of CA Civil Code Section 1468, and alters the express conditions of the MOA by: 1) allowing an unauthorized third party to construct and maintain the road; and 2) failing to require the formation of an appropriate funding mechanism.

STAFF RESPONSE: The facilitation process which has been undertaken since March, 2004 has been intended to address the concerns of both the **SERVIENT TENEMENT OWNERS** and the **DOMINANT TENEMENT OWNERS**. Prior to the appeals to the Planning Commission and your Board, P&D staff have attempted to work with the appellant and applicant to ensure that the

project is properly designed. The appellant asserts that the DOMINANT TENEMENT OWNERS are not properly represented.

- Condition 2, regulating the placement of any excess fill material, is not in conformance with the requirements of the MOA or the CA Civil Code.

STAFF RESPONSE: Staff believes that Condition of Approval 2, as included in the approved permit, is adequate to ensure that the landowner's concerns are addressed prior to placement of any excess fill material on the property.

- Condition 3, regulating the location of the access road along the existing vineyard, is not authorized or approved by the parties of the MOA.

STAFF RESPONSE: The facilitation process which has been undertaken since March, 2004 has been intended to address the concerns of both the SERVIENT TENEMENT OWNERS and the DOMINANT TENEMENT OWNERS. Prior to the appeals to the Planning Commission and your Board, P&D staff have attempted to work with the appellant and applicant to ensure that the project is properly designed. The appellant asserts that the DOMINANT TENEMENT OWNERS are not properly represented.

- Condition 4, requiring re-surveying of the access road upon construction, is incorrect and not in conformance with the CA Civil Code.

STAFF RESPONSE: Condition 4 is in conformance with the provisions of the MOA. The appellant's reference to the California Civil Code is unclear and unspecific.

- Condition 5 (Revised Condition of Approval 7), addressing water flow and drainage provisions across the access road, is forbidden by the MOA.

STAFF RESPONSE: Since filing of the Appeal to the Board, P&D staff has received letters from the Natural Resource Conservation Service (John Bechtold, District Conservationist, dated 02/05/04 and 06/23/04) and the agricultural lessee of the subject property (Jeff Martin, Big E Produce, Inc., dated 02/16/04) regarding this issue (Attachments J-1, -2, and -3). These letters discuss flooding issues associated with erosion, sedimentation, and contamination of the watershed, as well as agricultural activity.

The applicant has revised the project description to include the following:

“As approved, the project shall be implemented pursuant to the California Regional Water Quality Control Board requirements for a Storm Water Pollution Prevention Plan (SWPPP).”

Adherence to this requirement would ensure that the project would not contribute pollution to the natural watershed. Condition of Approval 7 also addresses the tractor crossing issue.

- Condition 6 (Condition 9 in revised LUP), requiring the placement of gates across the access road, does not meet the requirements of the MOA.

STAFF RESPONSE: Revised Condition of Approval 9 includes a requirement that all gates are to be approved by the SERVIENT TENEMENT OWNERS.

Project History (A more detailed chronology is contained within the attached P/C Staff Report)

November 26, 2003 00LUP-00000-06435 (00-LUN-604) approved for grading and access road development.

December 8, 2003 Cargasacchi Appeal to Planning Commission of P&D LUP Approval.

January 28, 2004 Planning Commission Approval of LUP.

February 6, 2004 Cargasacchi Appeal to Board of Supervisors of Planning Commission's LUP Approval.

Mandates and Service Levels:

Pursuant to the Article III Zoning Ordinance, a decision of the Planning Commission may be appealed to the Board of Supervisors by the applicant or an aggrieved person.

Fiscal and Facilities Impacts:

The appellant submitted a \$435.00 fee as part of their appeal. Appeal costs that exceed this amount are budgeted in the department's adopted budget.

Special Instructions:

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

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

Concurrence:

None

Attachments:

- A. Appeal of John and Peter Cargasacchi to the Board of Supervisors, dated 02/06/04.
- B. Draft LUP, including revisions based on facilitation, dated 11/09/04.
- C. Draft LUP, as approved by the Planning Commission, dated 01/28/04.
- D. Findings
- E. Planning Commission Action Letter for 03APL-00000-00022, dated 02/23/04.
- F. Planning Commission Staff Report for 03APL-00000-00022, dated 01/21/04.
- G. Memorandum of Agreement and Easement Location Document, recorded 03/16/90.
- H. Agreement to Re-Locate Water Well Easements and Grant New Easements
- I. Access and Use Agreement
- J.
 - 1. NRCS letter to John Karamitsos, dated 02/05/04
 - 2. Big E. Produce letter to John Karamitsos, dated 02/16/04
 - 3. NRCS letter to Chris Marks, dated 06/23/04.

ATTACHMENT D: FINDINGS

1.0 ADMINISTRATIVE FINDINGS

LAND USE PERMIT FINDINGS

1.1 Pursuant to Section 35-314.5 of the Article III Zoning Ordinance, a Land Use Permit shall only be issued if all of the following findings can be made:

1.1.1 That the proposed development conforms to the applicable policies of 1) the Comprehensive Plan, and 2) with the applicable provisions of Article III and/or falls within the limited exception allowed under 35-306.7, Nonconforming use of Land, Buildings and Structures.

Land Use Permit 00LUP-00000-6435 (approved by the Board of Supervisors on November 9, 2004) consists of grading and access road construction. As discussed in the Executive Summary of the Board letter and Section 6.0 of the Planning Commission staff report (dated 01/21/04), with inclusion of conditions of approval, the project is consistent with all applicable Comprehensive Plan policies, as well as relevant zoning and subdivision regulations. Access roads are permitted uses within the AG-II-100 zone district. With inclusion of conditions of approval included in Attachment B, the project is consistent with this finding.

1.1.2 That the proposed development is located on a legally created lot.

The parcel on which the proposed access road improvements would be constructed was created on February 5, 1985. The easement within which the access road improvement would be located is established through the Memorandum of Agreement and easement location document (90-017789, recorded on March 16, 1990). The project is consistent with this finding.

1.1.3 That the subject property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivision, setbacks and any other applicable divisions of this Article, and such zoning violation enforcement fees as established from time to time by the Board of Supervisors has been paid. This subsection shall not be interpreted to impose new requirements on non-conforming uses and structures under Section 35-305 et seq.

The subject property is in compliance with all laws, rules, and regulations pertaining to zoning uses, subdivision, setback and any other applicable divisions of Article III. There are no zoning violations relating to the project site. As discussed in Finding 1.1.1. above, the project is consistent with all requirements of the Article III Zoning Ordinance.