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Susan F. Petrovich
Attorney at Law
805.882.1405 tel
805.965.4333 fax
spetrovich@bhfs.com

**VIA EMAIL TO BOARDLETTERS@CO.SANTA-BARBARA.CA.US AND
SBCOB@CO.SANTA-BARBARA.CA.US**

Board of Supervisors
County of Santa Barbara
Gregg Hart, Chair
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Frampton Lotline Adjustment and Recorded Map Modification, 19LLA-00000-00003, 19RMM-00000-00001,

Dear Chair Hart and Honorable Supervisors:

Brownstein Hyatt Farber Schreck represents Glenn and Valerie Alger, whose property abuts the Frampton project site ("Project Site"). We submit this letter on their behalf to express the Algers' concern about the propriety of approving this project without addressing **all** of the significant environmental impacts of the project, including the actions taken by the Applicants to modify the property in preparation for the County's consideration of the pending project. Those modifications caused wide-spread environmental damage by stripping native vegetation from portions of the Project Site, all in violation of the conditions imposed on the lot split that is allowing the Applicants to market these as two separate lots.

The Applicants Must Be Required to Restore the Native Habitat Removed.

We have submitted with our appeal two biologist reports fully describing in the environmental damage done to the native habitat in 2017 and again in 2018. The Applicants' biologist didn't even mention this damage in the report submitted in support of the Frampton project ("Project").

We believe that the 2001 Planning Commission would never have approved this lot split if the staff wasn't going to enforce their conditions. It is clear from the 2001 Planning Commission's findings that the Commissioners anticipated that the conditions ensuring protection of the then-existing Environmentally Sensitive Habitat ("ESH") would be respected and enforced. Why else would the conditions be required to be recorded?

1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101-2711
main 805.963.7000

From the perspective of a developer, whose objective is to obtain the highest possible price for these lots, the native habitat removal is an "improvement." To the Algers, it is a travesty. What good are project conditions if the County doesn't enforce them?

We also have submitted a comment letter regarding the inadequacies in the Mitigated Negative Declaration (MND), identifying potentially significant environmental impacts not adequately addressed in the proposed MND for this project. The MND doesn't acknowledge or address the vegetation clearing activities described in detail below.

We ask that your Board address the ENTIRE Project, not just the relocation and enlargement of the Development Envelopes and related FFMZ.

Other Developers Will Be Watching the Outcome of this Hearing – Will the Applicants Get Away with Violating the Lot Split Conditions or Will They Be Required to Repair the Damage?

In considering the contents of this letter and its attachments, we ask that you consider the repercussions of your decision. Will you send a strong message to these Applicants and to the rest of the land use community that it's not acceptable to prepare their land for a project by removing native vegetation and other similar obstacles, widening and paving new roads, and planting invasive species, particularly with existing conditions prohibiting such conduct?

The Staff Report Claims that the Board Can't Consider Past Acts and Must Focus Solely Upon the Building Envelopes and Lotline Adjustment. That Is Incorrect and Contrary to Staff's Position in 2017.

On May 28, 2020, we submitted two letters, one addressed to County planner Travis Lee and one addressed to the Planning Commission. Both letters are included in our appeal packet and address specifically the conditions and findings made by the 2001 Planning Commission, the history of the Applicants' violation of those conditions and findings, the flaws in the conditions and findings that staff currently proposes.

We also have submitted with our appeal a 2017 letter from County Enforcement Officer Petra Leyva to Glenn Alger, claiming that the 2001 lot split conditions can't be enforced against the Applicants because there was no permit pending. Ms. Leyva also states, "*If or when a permit for development is submitted, the entire parcel for the proposed development will be evaluated under all applicable policies of the Comprehensive Plan/Toro Community Plan **and the development will be subject to all of the conditions adopted with the Parcel Map.***" The Parcel Map, of course, is the lot split map and enforcement of those conditions is not mentioned in the conditions proposed for this 2020 Project.

We draw your attention to Page 2 of the current staff report:

C. Appellant Appeal Issues and Staff Responses

Appeal Issue 1 Staff Response:

“This appeal issue concerns alleged impacts that previously occurred to habitat areas of the property outside of the designated development envelopes; however, these impacts are not directly related to the proposed project under review.”

In short, when the damage was occurring in 2017, County staff was promising that the damage would be addressed when a project was proposed, but in 2020 we should all just ignore the past.

The current staff report suggests conditions similar to those imposed in 2017, including on Page 3, in the first paragraph, a statement that **“no new development is allowed outside the envelopes except paving and utilities required for driveway access to serve the envelopes. Deviation from these conditions of approval would result in a zoning violation.”** If the condition violations today would be a zoning violation, why was the same rule not applied in 2017 for violating the lot split conditions?

We believe that County staff is misinterpreting the 2001 lot split conditions. For example, P. 3 of the current staff report (at the end of the first paragraph), includes the following statement: *“The project description of TPM 14,534 and associated conditions of approval were written in a way as to only apply to future residential development.”*

That is flatly untrue:

2001 Condition #1 – **“All construction, grading and other site disturbance associated with development of the proposed lots** would be limited to these designated envelopes.”

2001 Condition #19 – “[T]he applicant shall include all of the mitigation measures, conditions, agreements and specific plans associated with or required by this project approval on a separate informational sheet to be recorded with the Parcel Map. All applicable conditions and mitigation measures of the project shall be printed on grading and/or building plans”

2001 Condition #24 – **“Before using any land or structures, or commencing any work pertaining to any . . . improvement,** the applicant shall obtain a Land Use and Building Permit from Planning and Development. These Permits are required by ordinance and are necessary to ensure implementation of the conditions required by the Planning Commission.”

The conditions are not limited to residential development. In fact, they don't mention residences; they only mention “development” and “improvement.” Both terms apply here.

The County's Land Use Development Code defines "Development" as:

"A change made by a person to unimproved or improved real property, including the placement, the moving, construction, reconstruction, enlarging, demolition, or alteration of buildings or structures, landscaping improvements, mining excavation, or drilling operations. Agricultural improvements as defined are not considered as development within this Development Code."

The LUDC defines "Improvement" as:

"An object affixed to **or growing in the ground** other than a structure."

Appeal Issue 2, Staff Response

The staff report states that prior impacts associated with planting non-native vegetation within the property are unrelated to the current Project and are part of the baseline. That assessment doesn't apply here because the Property is subject to the 2001 lot split conditions and the blatant violation of those conditions was preparatory to submitting the current Project for approval. The damage is part of the Project, not the baseline.

The staff report also assures us that no new non-native ornamental landscaping is permitting outside the development envelopes. That damage already has been done and must be remedied, not ignored or even rewarded.

Appeal Issue 3, Staff Response

Staff contends that removal of the existing road that displaced native vegetation and opens the door to further paving of the road is outside the Project scope.

The former dirt road above the building envelopes provided adequate access for firefighting and property maintenance. The Applicants' claim that they need the road for those purposes, but a fire access road doesn't need to be paved and lined with pepper trees. Those activities violated the lot split conditions and created an open invitation for new development on the mesa. The Project must be conditioned to preclude further widening and paving of the road and a condition prohibiting the addition of structures in what should be replanted pristine native habitat.

The 2001 Planning Commission Imposed Conditions to Preserve and Protect Extensive Native Plant Habitat on the Site, Those Conditions Haven't Been Enforced.

The Biological Section of the 2001 staff report states, "Development envelopes are designated on the proposed lots to minimize the area of disturbance and preserve the

majority of the property in open space consistent with the goal of the Conservation Element.”

There was no Toro Canyon Plan in 2001, but the findings for approval in 2001 are clear -- the lot split approval was based upon conditions and findings intended to minimize impacts on the existing native vegetation and other biological resources on the site. For example, Finding 2.1.3.3 in the 2001 staff report states, “The proposed Development Envelopes, however, would limit grading and other site disturbance . . . to a gently-sloping area of the property where only minor native vegetation is present due to past agricultural practices.” Finding 2.1.3.5 states that the Development Envelopes were “specifically designed to avoid areas of steep slopes and substantial native vegetation. No trees are anticipated to be removed as part of future development.”

2017 Habitat Clearing and Damage Violated the Toro Community Plan

The Technical Memoranda included in our appeal sets forth the Toro Community Plan provisions that should have been (but were not) applied to the 2017 habitat damage, which included extensive clearing of native vegetation, addition of the second entrance road, and the creation of a gravel road up to and through the ESH and removal of native vegetation, including special status plant species.

The Algers Don't Oppose the Project If the Native Habitat Is Restored and the Project Is Conditioned As Described Above

The current project application proposes a relocation and enlargement of the 2001 Development Envelopes, which will result in further impacts to the areas once heavily vegetated with native plants, but now substantially denuded and replaced with non-native species.

Enlargement of the Development Envelopes and the associated expansion of the 100-foot FFMZ on the perimeter of the Development Envelopes will expand the project footprint further into the native habitat areas.

Mr. and Mrs. Alger don't oppose development of the project site, but they do believe that the native habitat as it existed in on the mesa above the building envelopes that was pristine native habitat in 2001 and now is a pathetic weed patch.

The Algers fear that the existing road will continue to be widened and paved and the next step will be an application for guest houses or similar structures. Given the Applicants' removal of virtually all of the native vegetation on the mesa, that is a reasonable concern.

The Staff Report and Proposed Mitigated Negative Declaration Don't Adequately Analyze All Project Impacts

We have included in our appeal our May 28, 2020 letter to Travis Lee, commenting on the inadequacy of the environmental review document for this Project. We won't repeat the contents of that letter but direct your attention to it.

The Comprehensive Plan Consistency portion of the staff report reflects a massive oversight in the staff report analysis.

Tamara Klug's 2017 Technical Memorandum provides a more complete and accurate analysis of the applicable Toro Plan provisions.

The staff report analysis of consistency with Land Use Element Hillside and Watershed Protection Policies 1 and 2 is inadequate because one cannot reasonably conclude that the grading and gravelling of a road right through the heart of ESH is consistent with these policies. Not only did the road construction result in excessive cutting as required by Policy 1, but it also does not preserve native vegetation to the maximum extent feasible as required by Policy 2. The road is now flanked by non-native invasive plants that will crowd out any native vegetation attempting to recolonize the site. Most important, though, is there is no explanation as to what this new road is for and why was it built through sensitive habitat?

Proposed Additional Conditions of Approval

We attach a list of proposed additional Project conditions that we request be imposed upon Project approval.

Many of the Proposed Findings Cannot Be Made Unless and Until the Native Plant Habitats Are Restored to their 2001 Condition

Finding 1.1.2 – Finding of No Significant Effect of the Project – for all of the reasons stated in this letter and in our comment letter on the MND, this finding cannot be made because significant environmental impacts have resulted from the applicant's grading and grubbing. Unless and until this damage is cured, the project has significant environmental impacts that require an Environmental Impact Report and mitigation.

Finding 2.1.1 – Conformity with the General Plan, including the Toro Canyon Plan – as set forth in the Tamara Klug 2017 Technical Memorandum, the project conflicts with multiple provisions of the Toro Canyon Plan and other General Plan elements.

Finding 2.1.5 – No Known Zoning Violations – County staff opened a violation case (17BDV-00000-00019) but apparently closed it because staff believed that no violation had occurred in the absence of development that requires a permit. Staff's position is

unsupportable and nonsensical. It opens the door for others to obtain a permit then use the land in a manner inconsistent with the conditions imposed. First, staff conceded that the road construction and paving required a County permit -- they issued an "after the fact" grading permit for the "road to nowhere" without requiring that the invasive plant species be removed and the native habitat be restored. Second, the staff committed a major error by giving the Applicants a green light to disregard the lot split conditions. As a result, invasive plants have supplanted the native plants that were intended to be protected

Finding 2.2.1 – Project Justified by Change in Circumstances – this finding cannot be made because the Applicants created the change in circumstances and violated the lot split conditions in doing so. They removed or damaged the very native habitats that the lot split conditions were intended to protect when they limited the size and location of the Development Envelopes. If interpreted as staff urges, this finding opens the door to piece-mealing in violation of CEQA.

Finding 2.2.4:

(a) Consistency with General Plan, including Toro Canyon Plan -- see same issue under Finding 2.1.1.

(b) Project Design Is Consistent with General Plan – the enlarged Development Envelopes and related FFMZ expansion into the remaining habitat cannot be consistent with the General Plan without significantly revising the conditions as noted above and by meticulously studying how to minimize the impacts of enlarging the development area, including fuel management, that would expand further into native plant habitat areas.

(d) Site Is Physically Suitable for Project – if the Project doesn't fit on the site without further impacting the native plants and related habitat, the site can't accommodate the applicant's plans for grand estates.

(e) Not Likely to Cause Substantial Environmental Damage – substantial natural resource damage already has occurred. Enlargement of the Development Envelopes and the FFMZ will expand that damage. The conditions of approval don't address this issue so the finding cannot be made.

Finding 2.2.6 -- Map Modification Complies with All Laws, Rules, and Regulations – without substantial native vegetation restoration and protection, this finding cannot be made.

Conclusion

County decision makers and the public, including neighbors, count on the imposition of project conditions to protect and preserve protected resources. The County's approval of

projects assumes rigorous enforcement of the conditions that make these projects consistent with CEQA, applicable law, and the County's ordinances and policies. If project conditions aren't enforced, they are meaningless.

The applicant purchased the property with the lot split conditions recorded against the title. Completely disregarding these conditions, which run with the land, the applicant damaged and destroyed large areas of sensitive native plants, then graded and paved a new roadway and a new entrance driveway (also in violation of the conditions because these new roadways are outside the designated Development Envelopes) right through the ESH.

The ESH on the mesa was particularly pristine and provided a continuous intact habitat. But the remainder of the site should be revegetated (outside the Development Envelopes) to better provide a potential wildlife corridor. With Toro Creek nearby, it is likely that wildlife used the former native vegetation as cover as they move from habitat to habitat and for forage. The newly graded and paved road invites further intrusion into the mesa area and the potential for additional damage.

Mr. and Mrs. Alger do not oppose a project on this site, but they urge you not to reward inappropriate habitat removal and, instead, require removal of invasive and other non-native species and re-establishment, preservation, and protection of the native vegetation in the long term.

Sincerely,



Susan F. Petrovich

Enclosure: Proposed New Project Conditions

APPELLANT PROPOSED ADDITIONAL CONDITIONS ALGER APPEAL OF FRAMPTON PROJECT

1. Owner/Applicant shall remove from the upper mesa (approximately 1.97 acres), located in the northerly portion of the project site adjacent to Assessor's Parcel 155-110-019, all invasive and/or non-native plants and weeds. In place of non-native and invasive species, Owner/Applicant shall plant and maintain in a healthy condition coastal sage and other native species ordinarily found in coastal sage communities.
2. The native plantings shall be weeded, watered, replanted if initial plantings don't thrive, and otherwise managed to ensure full restoration of healthy native vegetation, with a County-approved biologist monitoring until the plantings attain at least 80% coverage.
3. The upper mesa shall be used solely for establish and maintenance of native plants and related habitat. Therefore, no structures shall be erected on the upper mesa.
4. Owner/Applicant shall not install new or additional paving or widen the portion of the existing access road that lies between the building envelopes and the terminus of the access road on the upper mesa/ridge. The access road may be graveled to control dust and improve traction. The access road shall be used for fire access only and all non-native vegetation currently planted adjacent to the access road shall be removed and replaced with native vegetation.
5. All project conditions set forth in the County's approval of the Project, as well as all conditions described herein, shall apply to each parcel immediately upon final approval of the project.
6. No earth movement, native vegetation removal or damage, paving, ground disturbance or structure shall be allowed on any part of either parcel without fully complying with all conditions set forth in the conditions of approval. No pending permit issued for any activity on the project site shall be required to implement enforcement of these conditions.
7. Proposed Condition MM Bio-2b shall be replaced by the following [red indicates change in staff-proposed condition:

MM Bio-2b Fire Fuel Management and Habitat Improvement Plan: Prior to Land Use Permit Issuance, a qualified biologist shall prepare a Fire Fuel Management and Habitat Improvement Plan that specifically addresses the methods to be used to **restore, maintain and** protect ESH (coastal sage scrub **community** habitat, Santa Barbara honeysuckle, Nuttal's oaks, California walnut trees, and native grassland) **on the upper mesa in the northerly portion of the project site where coastal sage scrub,**

chaparral and other native vegetation were removed, and within the FFMZ, and throughout the remainder of the property outside the Development Envelopes. The Plan shall address how native vegetation within the FFMZs and throughout the remainder of the property outside the Development Envelopes on both lots will be modified, methods and measures to be implemented to selectively remove and control the spread of invasive, non-native grasses and shrubs, and selective removal of dead and dying non-native trees. Plan goals shall balance maximizing habitat values with fire safety.

The Plan shall include procedures for improving the quality of chaparral and coastal sage scrub and chaparral habitat by removal and control of non-native grasses and shrubs and selective removal of dead and dying eucalyptus and other non-native trees. Non-native vegetation shall be controlled so that native shrubs and trees can naturally recolonize these areas. The Plan shall contain the following elements:

- Specific recommendations on how to manage native vegetation within the 0-35 foot, 35-70 foot, and 70-100 foot fire fuel management zones. Vegetation management should balance fire safety with maintaining habitat quality for native plants and wildlife.
- Specific recommendations for the removal and control of eucalyptus trees in coastal sage scrub both within and outside of the FFMZs on both lots. Removal of these invasive, non-native species will greatly enhance native habitat quality. Eucalyptus should be cut at ground level and the stumps left in place to avoid unnecessary soil disturbance. Eucalyptus trunks should be scattered on-site to stabilize soils on steep slopes and to create valuable microhabitat for wildlife.
- Eucalyptus duff should be removed by hand (e.g. raking) in order to create sites where native coastal sage scrub shrubs and native trees (e.g. coast live oak) can re-colonize. These cleared areas should be monitored to eradicate and control invasive, non-native herbaceous vegetation.
- A qualified biologist should survey eucalyptus and other non-native trees to be removed for nesting birds, per standards developed by the California Department of Fish and Wildlife.
- Dead or dying coast live oaks that do not present a safety hazard should be left in place as nesting and roosting habitat for a variety of birds.
- The Plan should avoid unnecessarily degrading the occurrence or density of native grasses on any lot. Specifically, native grasses in the 0-30 ft zone and 30-100 ft zone should be mowed or weed-whipped, so that the root masses are not disturbed. Mowing or weed-whipping should only occur after the native grasses have set seed. Seed heads should be left on the ground to germinate.
- The Plan shall include removal of the non-native plants in all areas of the property lying outside the Development Envelopes and the FFMZ and shall prohibit future grading, ripping, and weed whacking in these areas. Removal of non-native trees shall be performed by hand and in the manner described in the Mitigated Negative

Declaration and removal of dead native vegetation shall be accomplished by hand-pruning. In no event shall native vegetation roots be disturbed or removed.

- The Plan shall include a 5 year maintenance and monitoring period to ensure restoration and maintenance of healthy native vegetation outside the Development Envelopes as well as success criteria.

PLAN REQUIREMENTS AND TIMING: The Fire Fuel Management Plan shall be prepared and submitted to P&D and Carpinteria-Summerland Fire Protection District for review and approval prior to Land Use Permit Issuance. A Notice to Property Owner shall be recorded on each lot that includes the approved Fire Fuel Management Plan. Removal of invasive and non-native plants from the upper mesa in the northerly portion of the project site and the planting of coastal sage scrub, chaparral and other native plants generally found in coastal sage scrub and chaparral communities shall be accomplished as soon as possible following project approval. The Plan shall be implemented consistent with the approved maintenance schedule and beginning with construction of initial infrastructure improvements or individual lot development, whichever occurs first. **MONITORING:** The County-qualified biologist shall submit an annual report by January 15 of each year for the first five years of implementation, reporting on plan implementation and success criteria. Permit Compliance staff shall site inspect to confirm compliance following the first year's fuel clearance activities. For years 2 through 5, conformance with the Fire Fuel Management Plan shall be demonstrated through the submittal of the annual report and annual photo documentation by the Owner/Applicant or site visits as necessary at the discretion of the Permit Compliance staff. Compliance with the Fire Fuel Management Plan shall be for the life of the project.