



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 12, 2008
Placement: Set Hearing
Estimated Tme: 1.5 hours on February
26, 2008
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department John Baker, P&D Director 568-2085
Director(s)
Contact Info: Zoraida Abresch, P&D Deputy Director 934-6585

SUBJECT: Santa Ynez Band of Chumash Indians' Appeal of Herthel-Montanaro Lot Line Adjustment, Third Supervisorial District

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Recommended Actions:

That the Board of Supervisors:

Set a hearing for February 26, 2008 to consider the Santa Ynez Band of Chumash Indians' Appeal (Case No. 07APL-00000-00029) of the County Planning Commission's August 22, 2007 denial 07APL-00000-00012 of the Zoning Administrator's approval of the Herthel-Montanaro Lot Line Adjustment (Case No. 05LLA-00000-00015) located at 2531 Grand Avenue (portion of APNs 135-240-079 and -080) in the Los Olivos Area, Third Supervisorial District.

At the February 26, 2008 hearing, the Board of Supervisors' action should include the following:

- a) Adopt the required findings for the project specified in the Planning Commission action letter dated January 18, 2008, including the Mitigated Negative Declaration 06NGD-00000-00029 (attached to Planning Commission staff report dated August 15, 2007 included as Attachment B);
- b) Deny the appeal, 07APL-00000-00029, thereby upholding the Planning Commission's denial of 07APL-00000-00012 of the Zoning Administrator's approval of 05LLA-00000-00015; and

- c) Grant *de novo* approval of Case No. 05LLA-00000-00015 subject to the conditions specified in the Planning Commission action letter and attachments dated January 18, 2008.

Summary Text:

A. Proposed Project

The proposed project is for a Lot Line Adjustment to adjust lines between three parcels of 1.63 acres, 1.54 acres, and 3.79 acres (gross) to create three parcels of 1.77 acres, 1.00 acres, and 4.19 acres. The purpose of the Lot Line Adjustment is to rectify the current configuration in which existing lot lines bisect structures, so that structural development now located on multiple lots would be contained within single lots, and the Neighborhood Commercial (CN) zoning now located on multiple lots would also be contained within one lot. After the proposed Lot Line Adjustment, the existing Montanaro house would be located entirely on Proposed Adjusted Parcel 1, which would be zoned 1-E-1. The existing commercial building, barn and shed would be located entirely on Proposed Adjusted Parcel 3, which would be zoned both CN and 1-E-1. Proposed Adjusted Parcel 2 would contain no structural development and would be zoned 1-E-1.

B. Zoning Administrator Action

The Zoning Administrator initially considered the Herthel-Montanaro Lot Line Adjustment on September 25, 2006. At the hearing, representatives of the Santa Ynez Band of Chumash Indians (Band) stated the project is in an environmentally sensitive area and therefore required an Initial Study. Specifically, the Band submitted information regarding nearby cultural resources and expressed concern about the lack of a requirement for a Phase 1 survey to be conducted prior to the approval of the Lot Line Adjustment.

The hearing was continued five times to allow for: 1) evaluation of the additional information submitted by the Band; 2) completion of a Phase 1 Cultural Resources survey; and 3) completion and circulation of an Initial Study and Negative Declaration. On March 26, 2007, the Zoning Administrator determined the proposed project to be consistent with all applicable Zoning Ordinance requirements and Comprehensive Plan requirements. The approved conditions of approval included the requirement that prior to land use clearances on the proposed adjusted parcels, an extended (subsurface) Phase 1 survey be conducted according to County guidelines by a qualified archaeologist and monitored by a Native American observer. This condition was added because the property is in an area along a creek where the probability of deeply buried cultural resources is high. The Band appealed the project to the Planning Commission on April 4, 2007.

C. Planning Commission Action

On August 22, 2007 the Planning Commission considered the Band's appeal. The appellant's major concern remained the timing of the extended Phase 1 survey. The Commission voted 5-0 to adopt the findings, deny the appeal, and approve the project with conditions as revised at the hearing (Attachment A). The condition revision consisted of a requirement that the Band be notified in writing of all development permit applications on the subject property. The Commission's decision was appealed to the Board of Supervisors on September 4, 2007.

D. Staff Response to Appeal Letter

The current appeal (Attachment C) again contends that cultural resource issues have not been addressed adequately for this project. These issues were raised in the original appeal to the Planning Commission and are discussed in the attached Planning Commission staff report (Attachment B). The main appeal points and staff responses are summarized as follows:

1. Timing of Extended Phase 1 Work. The extended (subsurface) Phase 1 testing should be conducted prior to recordation of the deed for the Lot Line Adjustment and not deferred until the time of land use clearances. The Lot Line Adjustment should not be finalized with setbacks and building envelopes until completion of adequate subsurface presence/absence testing for cultural resources.

Staff Response: Staff and the Planning Commission believe that completion of the Extended Phase 1 testing prior to land use clearances is more than adequate to ensure protection of any cultural resources that may exist on the subject lots. No development envelopes are currently proposed, and setbacks are consistent with those required by the specific zoning. The property owner would like to defer the testing, and any resultant disturbance to cultural resources potentially on the site, to a time when development is proposed and actual areas of ground disturbance (i.e., proposed development envelopes) are known. This would potentially result in less disturbance to resources that may be present as well as less ground disturbance in general. If cultural resources are identified during the testing program, then County Cultural Resource Guidelines and Section 15124.4 of the CEQA Guidelines require that the resources be evaluated for significance and feasible mitigation measures identified. The applicant has agreed to this condition.

2. Request for an EIR. An EIR should be prepared (following CEQA Guidelines Section 15064(f)) because there is disagreement among expert opinion over the significance of the project's effect on the environment.

Staff Response: Staff and the Planning Commission agreed that conditions imposed on the LLA ensure that subsurface testing will occur prior to any future development on the Montanaro Farm. If resources are identified within proposed development locations, then they will be avoided or additional work required by CEQA and County Guidelines will be conducted. In either case, impacts would be mitigated to less than significant.

3. Request for a Monitoring Plan. A plan for construction monitoring by archaeologists and Native American observers should be adopted.

Staff Response: Conditions No. 3 and 4 of 05LLA-00000-00015 require that the Extended Phase 1 testing for this project be monitored by a Native American Observer. If cultural resources are identified during the Extended Phase 1 work, then they would be avoided or evaluated for significance and feasible mitigation measures identified. As required by the County Guidelines, any mitigation of impact excavations would be monitored by a Native American Observer.

If extended Phase 1 testing of specific proposed development envelopes has negative results, then no additional construction monitoring is necessary as no cultural resources were identified within the

development envelope. The project has been conditioned to ensure that no construction could occur in previously untested areas.

4. Failure to Consider Cumulative Impacts. The Herthel/Montanaro property includes nine legal lots. The Lot Line Adjustment addressed by 05LLA-00000-00015 involves the southernmost three lots. Lot Line Adjustment 05LLA-00000-00016 involves four lots at the north end of the property. The two LLA projects are separated by two lots, each approximately three acres in size. Together, these lots comprise the “Montanaro Farm” referenced by the Appellant.

The Appellant states that the County failed to consider cumulative impacts resulting from the two lot line adjustments on the Montanaro Farm. There is also concern that potential impacts to the Chumash Cemetery are more likely as a result of development of the northernmost lots. Finally, the Appellant states that the four lots addressed in 05LLA-00000-00016 should be combined with the three lots in 05LLA-00000-00015 to determine whether the total number of parcels to be adjusted is in violation of the Subdivision Map Act.

Staff Response: In consultation with County Counsel, staff has determined that the two Lot Line Adjustment projects, which are separated by a third portion of the Montanaro Farm, may be appropriately considered separately and individually without violation of the Subdivision Map Act.

E. Facilitation Meeting with County Counsel between Appellants and Applicant

Facilitation with County Counsel occurred on November 5, 2007. The parties to the appeal did not reach an agreement to withdraw the appeal. County Counsel’s memorandum to the Board regarding this facilitation is included as Attachment D.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The cost to process this appeal is partially offset by the \$443 appeal fee paid by the appellant per the Planning & Development Department fee schedule in effect on the date that the appeals were filed (Resolution 06-359 adopted by the Board of Supervisors on November 14, 2006, effective January 2007). The fee was collected from the appellants, the Santa Ynez Band of Chumash Indians. The remaining cost of processing the appeal is budgeted in the Permitting and Compliance Program of the Development Review Division – North on page D-290 of the adopted budget for Fiscal Year 2007/2008. There are no facilities impacts. Estimated staff time to process the appeal and prepare for and attend the hearing is approximately 40 hours for an estimated cost of \$5,160.

Staffing Impacts:

Legal Positions:

n/a

FTEs:

n/a

Special Instructions:

Clerk of the Board shall publish a legal notice in the Santa Barbara News-Press and the Santa Maria Times and shall complete the mailed noticing requirements for the project at least ten (10) days prior to the February 12, 2008 hearing (mailing labels attached).

Clerk of the Board shall forward a copy of the Minute Order and copies of the legal notice and proof of publication to Planning & Development, Hearing Support Section, Attention: David Villalobos.

Attachments:

- A. Planning Commission Action Letter dated September 4, 2007
- B. Staff Report dated August 15, 2007
- C. Appeal Application dated September 4, 2007
- D. Report of the November 13, 2007 Facilitation Process for the Appeal of the Herthel-Montanaro Lot Line Adjustment

Authored by:

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