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P.N. 16-014.01

November 6, 2020

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

Subject: Alger Appeal of Planning Commission Approval of Frampton Lot Line Adjustment and Recorded Map Modification; 19LLA-00000-00003 & 19RMM-00000-00001 APNs 155-230-007, -017, -018; 785 – 805 Toro Canyon Road

Dear Honorable Supervisors:

L & P Consultants represents Kevin Frampton, the owner and applicant for the subject Lot Line Adjustment (LLA) and Record Map Modification (RMM) that was unanimously approved by the County Planning Commission on July 10, 2020, and which is the subject of an appeal application to your Board on your November 10, 2020 agenda, by Glenn and Valerie Alger, who own a neighboring property.

LLA and RRM Request Purpose and Objective

The LLA and RRM applications involved a request for a minor boundary adjustment (the LLA) between two vacant (2) lots owned by the applicant, and a request to reconfigure the existing Building and Development Envelopes (BDEs) on the two (2) lots that were created by a Planning Commission approved Parcel Map in 2001 (the RMM). The LLA application, being an adjustment of less than 10% of the land area of the smallest lot, would by ordinance have been approved by the County Zoning Administrator, but was required to be bundled with the RRM application for Planning Commission (PC) review and approval of the BDE reconfigurations.

The sole purpose for the LLA and RMM was to simply create more space between the building sites on the two (2) lots in order to render a more rural setting for the neighborhood. The 2001 PC approval that created the Lots and BDEs occurred when the property had a General Plan land use designation of "Residential" and a zoning designation of 1-E-1 (1-acre minimum parcel size) and 3-E-1 (3-acre minimum parcel size), designations that are compatible with suburban residential density, similar to the Montecito Planning area. Consequently, the two (2) BDEs were "clustered" together with 10-foot setback separation between buildings. In 2002, the Board of

Supervisors adopted the Toro Canyon Plan (TCP) in which the land use and zoning designations for the lots were changed to “SRR 0.1” and 10-E-1 (rural residential, 10-acre minimum parcel size), creating a more rural land use and neighborhood character. Furthermore, in a subsequent Board of Architectural Review (BAR) hearing for a proposed single family dwelling development on one of the vacant lots, the new rural land use designation triggered a BAR comment that **“SBAR is in support of moving the development envelope on the upper lot (Parcel Two), further away from the lower lot due to the potential cumulative impact of having two residences so close together in the rural area”**. These County driven land use changes and resulting BAR directed comments compelled the applicant to seek RMM approval by the PC to reconfigure BDEs to render a rural character neighborhood. The PC approval of the LLA and RRM being appealed to your Board simply increased the setback separation between the building sites to 50-feet.

Approved Development Area

It is important to note that both of the BDEs are located on the lower elevation southeasterly corner of the property, encompassing less than 2-acres of the combined nearly 13-acre property. The remainder of the property was proposed to remain undeveloped and designated by the applicant as a “Development Exclusion Area”, and the PC approval included a voluntary land use restriction as follows:

Development Exclusion Areas - The areas not defined as Building Envelope, Development Envelope, or Fuel Management Areas are relegated as Development Exclusion Areas that are to be left in an undisturbed condition, and in which no development, grading, ground disturbance or vegetation removal of any kind can occur, with the exception of existing access roads, driveways, water storage tanks, infrastructure, pipe lines, wells and any or all other similar uses. Such existing uses are reserved rights to the lot owner and can be repaired, replaced, renovated, removed, upgraded and maintained.

The effect of this designation, and other PC Conditions of Approval, is to render the remaining property to passive use by the owner, and effectively limit development to the designated BDEs. A property owner cannot seek development approval outside of the BDEs unless these conditions are modified by the PC through a future discretionary process, such as another RMM application, subject to the robust regulatory review and approval framework required for such applications.

Appellant's Assertions and Recommendations

In essence, the appellant (Alger) is asserting that the applicant undertook unpermitted actions in 2017 to destroy native habitat over portions of the property in order to create conditions that would effectuate development outside of the approved BDEs, in disregard for the 2001 Parcel Map Conditions of Approval. Alger further asserts that the applicant "graded, graveled and partially paved a wide driveway up a steep slope" to the upper reaches of the property and in doing so removed native vegetation that was replaced with swaths of non-native vegetation, with the implication being that the road was newly established and graded without permits. To remedy these asserted unpermitted activities, Alger is recommending that the LLA and RMM Conditions of Approval be supplemented to require the removal of the driveway and any non-native vegetation, and restorative re-planting of native vegetation removed over the area. These assertions are not based in the relevant facts, which are provided for your consideration as follows:

2001 Parcel Map Conditions of Approval

Alger asserts that activities involving vegetation and tree removal, and unpermitted grading for a Driveway, occurred over portions of the property in violation of the 2001 Conditions of Approval for Parcel Map 14,534. On May 23, 2001 the Planning Commission approved Parcel Map 14,534 and the associated CEQA MND and Conditions of Approval. The approval created two (2) lots with Building and Development Envelopes (BDEs) designed to contain future residential development. Although the Conditions limit development as defined by the Zoning Code to the BDEs, there are no provisions in the Conditions that specifically prohibit use of the remaining portions of the property, nor prohibits the owner to engage in exempted activities in areas outside of the BDEs, or exempt or permitted repair and maintenance activities for existing improvements. The same Alger 2001 Conditions of Approval violation claim was made to P&D in July 2017, and was rejected by P&D staff in an August 2017 letter response.

As noted in the above Approved Development Area section of this letter, the subject approval undergoing this appeal includes a voluntary "Development Exclusion Area" measure that effectively renders areas of the property outside the BDEs as passive use areas, and allows for fire fuel modification and repair and maintenance of existing improvements. In addition, the LLA and RMM Conditions of Approval also include measures providing prohibitions and restrictions over the use of the property outside the BDEs that will provide habitat protection, that otherwise will not be in place if the PC approval is overturned by your Board.

Evidence of Historic Driveway

The Driveway has existed over the property for many decades, with the earliest available (1994) Google Earth photography showing its existence (**see Attachment A**). 2002 aerial photography shows that the Driveway was widened and improved, apparently in conjunction with late 1990s County required septic system drywell testing activities associated with the 2001 Parcel Map approval (**see Attachment B**). The 2002 photography shows evidence of the Driveway being widened and associated vegetation removal, presumably to accommodate access for heavy drilling and excavation equipment access for drywell construction as multiple drywell locations are also depicted. Subsequent year aerial photography continues to show the Driveway. The notion that the Driveway has not existed and was established in 2017 without permits disregards facts known to, but apparently for the purposes of the appeal, overlooked by the appellant, who has owned his adjacent property since 2005.

The applicant purchased the vacant property in 2017, and undertook efforts to maintain the property. This included repair and maintenance of the Driveway, and the applicant applied for and was issued an Erosion Control Permit in January 2017 (**see Attachment C**). The scope of work for the approved permit included removal of vegetation and refuse, re-grading and re-contouring for positive drainage, installation of cross drain pipes and drainage dispersal devices, and base paving. The Erosion Control permit work was completed, inspected and signed off by County inspectors in April 2017.

Native Vegetation Removal

Over the years the prior owners had not performed any maintenance of the property, which had become populated with areas of dead and dying eucalyptus trees and chaparral. In addition, the vacant property had become known as a local convenient dump site, with piles of trash accumulating on the lower reaches of the property. Due to the series of wild fires across the South County in the last decade (Tea, Gap, Jesusita, Sherpa, and Thomas), in late 2016 the applicant outreached to the Carpinteria-Summerland Fire District in regards to fire fuel management removals of dead trees and brush. Fire Chief Ed Foster visited the property and directed an approach for fire fuel eradication. The applicant also hired a County approved Arborist to evaluate the dead trees and brush, and assist the Fire Dept. in creating the removal program (**see Attachments D & E**). The focus was removal of dead trees and dead brush, and intentionally avoiding removal of live native plants as they provide an attractive native landscape appearance. Most of the dead plant material was hand cut and loaded into Marborg containers for composting. About a ½-acre area was masticated with a small track excavator including a 5-foot wide swath along the driveway shoulders, a 1/3-acre area of tightly concentrated 7-foot high

dead brush, and dead trees located in the lower reaches of the property. Total area of dead tree and brush removal was about 1.25-acres. The mastication process removes dead plant foliage but leaves the root system intact for plant regeneration. It is not grading. Removal of large scattered mounds of dumped trash and debris involved an additional five (5) 40 yd Marborg haul-off containers. In May 2017 Susan Petrovich, the appellant's attorney, sent the applicant a letter acknowledging that her contact with P&D staff disclosed that the Driveway repair and maintenance work was conducted with the proper permit, but cautioned that vegetation removal was limited under County ordinance to 5-acres in any 12-month period. As noted above, the actual tree and vegetation removal was about 1.25 acres. Subsequent to the removal of dead trees and brush in 2017, Larry Hunt, a County approved Biologist, has had occasion to observe the habitat regeneration up to and through 2020 and has noted the habitat regeneration (**see Attachment F**).

Zoning Violation Claims

In a late July 2017 letter to P&D, Alger asserted that "on-going habitat destruction and unpermitted grading" had occurred over a 2.4-acre area of the property, and that the 2001 Parcel Map Conditions of Approval had been violated by these activities.

By letter date August 31, 2017, P&D staff responded to the Alger complaint by informing Alger that brushing and vegetation and tree removal did not require zoning or building permits and therefore the property was not in violation of the Zoning Code (**see Attachment G**). P&D staff also informed Alger that the County Grading Inspector conducted a site investigation in response to the Alger complaint and determined that the dead vegetation and tree removal did not trigger any Grading Permit requirements. Lastly, P&D staff informed Alger that the onsite activities did not constitute development as defined by the Zoning Code, and that there was no violation of the 2001 Parcel Map Conditions of Approval. P&D closed the complaint file with no further actions taken by Alger.

Conclusions

The unanimous PC LLA and RRM approval has adopted the required findings and Conditions of Approval, and CEQA review and mitigation measures, to prevent adverse environmental impacts to the resources that may exist over the property, while allowing for appropriate fire fuel management and repair and maintenance activities. The appellant's proposal to impose additional Conditions of Approval that requires the removal of the driveway that has existed for at least 25 years, and to plant native species on areas of the property not proposed for development as mitigation for violations that did not occur, have no nexus to the project before

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you. The appellant's asserted Zoning Code violations were reviewed and rejected by P&D in 2017, and the appellant opted to not exhaust the administrative remedies available to him regarding his claims. He is now utilizing the appeal process for the 2020 LLA and RMM approvals to "re-litigate" claims rejected by the County in 2017. Furthermore, and contrary to the appellant claims, the applicant undertook the appropriate permit process and coordination for the Driveway repair and maintenance, and fire fuel removals of dead brush and trees, with good faith reliance on those permits and processes.

In this regard, I request that you deny the appeal, make the required findings for approval, adopt the MND, and grant de novo approval of the LLA and RMM projects.

Very truly yours,

Mark Lloyd
L & P Consultants
Agent for the Applicant

(11-06-20 BOS Letter for Alger Appeal.doc)

Attachment A

EXISTING
ROAD

805 Toro Canyon Rd

Attachment B

ROAD MAINTENANCE
AND BRUSH CLEARING



805 Toro Canyon Rd





County of Santa Barbara

Planning and Development

Massoud Abolhoda, Building Official

17GRD-00000-00016

FRAMPTON EROSION CONTROL

TORO CANYON

2/22/17

SANTA BARBARA

155-230-018

INSPECTION REQUEST VIA E-MAIL:

Inspection-South@countyofsb.org e-mail MUST contain:
Address, Permit Number, Inspection Type, Contact Name,
Contact Phone number

THIS PERMIT BECOMES NULL AND VOID unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the work is commenced. [A] 105.5 2013 CBC; R105.5 2013 CRC.

DESCRIPTION OF WORK:

Erosion Control: Surface Drainage on Existing Dirt Road, Clean Sluff-Offs From Rains, add Cross Drains and Base Road

CLEARANCES: GRADING

Construction Bond

Yes No

High Fire Area

Yes No

Fire Sprinklers Required

Yes No

Permit Compliance

Yes No

INSPECTION REQUEST LINES

Santa Barbara	805	568-3118
Santa Maria	805	934-6232

MITIGATION FEES

Yes No

Clean water

Yes No

INSPECTION	DATE	INIT	INSPECTION	DATE	INIT	INSPECTION	DATE	INIT
Temp Electrical			Rough Sprinkler Piping			Pool Setback		
Grounding Electrode			Fire Alarm			Pool Steel/ Bonding		
Fire Dept. Access			Rough Electrical			Equipotential Bonding		
Fire Dept. Protection H2O			Rough Mechanical			DO NOT GUNITE UNTIL ABOVE IS APPROVED		
DO NOT CALL FOR FOUNDATION UNTIL ABOVE IS APPROVED			Rough Plumbing			Pre-plaster		
Caissons			DO NOT CALL FOR FRAME UNTIL ABOVE IS APPROVED			Pool Fencing		
CMU 1 st lift						Building Gas Test		
CMU 2 nd lift			Framing			Gas Meter		
CMU top out			DO NOT CALL FOR INSULATION UNTIL ABOVE IS APPROVED			FINAL INSPECTIONS		
Foundation/Setback						POOL FINAL		
DO NOT PLACE FOUNDATION UNTIL ABOVE IS APPROVED			Exterior Drywall			FIRE DEPT		
Slab Steel			Insulation			EHS		
Elevation verification			DO NOT DRYWALL UNTIL ABOVE IS APPROVED			ROADS		
U/F/S Electrical			Ext. Lath			GRADING	4/21/17	(B)
U/F/S Mechanical			Ext. Weather Protection			PERMIT COMP		
U/F/S Plumbing			Interior Drywall			PLANNING		
U/F Insulation			T-bar Ceiling			MECHANICAL		
Floor Joist			DO NOT STUCCO OR INSTALL EXT. FINISHES UNTIL ABOVE IS APPROVED			PLUMBING		
DO NOT COVER FLOOR UNTIL ABOVE IS APPROVED						ELECTRICAL		
Floor Nailing			Building Sewer			CLEANWATER		
Pre Wrap/Nail			U/G Electrical			WATER DIST.		
Shear Panel			Water Service			SANITATION DIST.		
Roof Nailing			U/G Gas Line			MWEL0		
DO NOT COVER ROOF UNTIL ABOVE IS APPROVED			U/G Gas Test					
			Shower Pan			FINAL BUILDING	4/21/17	

Attachment D

785 Toro Canyon,



Kevin Frampton <kfram127@gmail.com> Mon, Nov 21, 2016, 3:32 PM

to Ed

Hi Ed,

Per our site meeting today in which we reviewed Fire Abatement issues: we will be removing and chipping the dead eucalyptus trees, old downfall logs, dry brush, piles of brush and pallets that people have dumped on the property over the years, and doing a general clean up of the vacant sites.

Although we are getting close to 'burn season' you and I discussed that given the ongoing drought conditions there is too much risk to do any burning so all materials will be chipped and or cut into logs or kindling and stacked off to one side of the property for future use as firewood. No burning will occur. Any 'trash' will be hauled away via Marborg container.

Please confirm you got this memo and let me know if there is anything else you may need.

Thank you,

Kevin Frampton
(805) 448.8055 c

FW: Tree Service

Inbox x



Foster, Ed <e.foster@csfd.net> Mon, Nov 28, 2016, 3:40 PM

to me

1. I have included 2 lists one from our records here in CSFPD and one that is provided by the Montecito Fire District.

- a. I have marked those that cannot handle a larger job such as you have.
- b. I cannot speak to the Montecito list, so you will just have to do a bit of calling.

2. Southern California Edison Line Maintenance

Contact Patrick Gladden (805) 625-7411

Best to you

Ed Foster

Fire Marshal

Fire Prevention Bureau

Carpinteria-Summerland Fire District

(805) 566-2451

-----Original Message-----

From: CSFDScanner@csfd.net [mailto:CSFDScanner@csfd.net]

Sent: Monday, November 28, 2016 3:50 PM

To: Foster, Ed <e.foster@csfd.net>

Subject: Scan from Carpinteria-Summerland Fire District

Attachment E

Mesa Tree Co.

3321 Camino Arroyo
Santa Ynez, Ca. 93460
Ph.805-689-7463
Email mesatreeco@aol.com
Cont. lic. 671285

Att: Kevin Frampton
Re: 785 Toro Cyn
Ph:
Cell: 448-8055
Email: kfram127@gmail.com
Request for description of work performed:

July 14, 2020

Chaparral slope:

Jan 2017:

Contacted by property owner to assess dead/dying native vegetation.

Site visit revealed south/east facing chaparral slope comprised native vegetation – Toyon – Ceanothus – scrub oak. Prolonged drought conditions combined with southern exposure had resulted in dieback (approx. 80%) of plant material covering about 1/3 acre.

Vegetation in question approx. 6' regrowth from established rootstalk/burls from previous (repeated) historic burns.

With heavy fuel loads and ongoing concern around recent wildfires, I recommended employing use of a tracked excavator and masticator attachment to “mulch” the area, taking care to preserve root structure of existing plant material, this would encourage regrowth, leaving the resulting “mulch” (fine cuttings) to help stabilize slope as well as break down and nurture depleted soil.

I have been employed by both Summerland (Rolf Laarson) and Montecito FD (Kerry Kellog) To address similar situations (use of masticator) with exceptional results and positive feedback.

Dead standing Eucalyptus trees:

Feb 2017

Revisited the site to discuss removal of dead standing as well as fallen Eucalyptus trees scattered over approx. 10 acre (?) property.

Established trees (approx. 50 year old) trees had been stressed due to drought conditions and ultimately finished off by Eucalyptus Longhorned Borer. Evidence of borer activity was apparent, both past and ongoing.

It was recommended affected (dead) trees be removed to reduce potential fuel load on the property.

Douglas Coale, ISA Certified Arborist WC1749
Mesa Tree Company

**Hunt & Associates
Biological Consulting Services**

Kevin Frampton
12250 Linda Flora Drive
Ojai, California 93023

5 November 2020

Subject: Comment on Beneficial Effects of Eucalyptus Removal, 805 Toro Canyon Road (APNs 153-230-017 and -018), Santa Barbara County, California.

Kevin,

I prepared the Biological Evaluation of a proposed lot line adjustment of 805 Toro Canyon Road in January 2019, and in that document I recommended a number of mitigation measures to avoid or offset potential impacts to sensitive biological resources, including coastal sage scrub vegetation, native grasses, and other special-status species that could arise from the development project. Although the proposed building envelopes for the future lots were located in areas of low biological value with minimal impacts to resources, the mandatory 100-foot fire fuel management zone surrounding them included areas of coastal sage scrub of high biological value.

It was noted during field work for the Biological Evaluation that coastal sage scrub here was thoroughly infested with two species of eucalyptus that formed an open woodland over the native vegetation. The eucalyptus trees, in addition to be invasive, non-native species with low wildlife value, were in very poor condition, with many trees dead or dying. I recommended removal of these trees to serve two purposes: a) significantly reduce the fire fuel load and fire hazard, and; b) enhance existing coastal sage scrub understory and coast live oak growth by removing a major inhibitor of native growth and recruitment caused by the allelopathic effects of oils in eucalyptus detritus (leaf and stick litter).

Since the dead and dying trees were removed, coastal sage scrub shrubs have increased growth and percent cover. Coast live oak recruitment and growth is likewise much improved. The result is a healthy, native, self-sustaining scrub community with a significantly lower fire fuel load and fire potential.

Sincerely,

Lawrence Hunt

Lawrence E. Hunt

5290 Overpass Road, Suite 108
Santa Barbara, California 93111
Office: (805) 967-8512 Cell: (805) 689-7423
Email: anniella@verizon.net



County of Santa Barbara Planning and Development

Glenn S. Russell, Ph.D., Director

Dianne Black, Assistant Director

August 31, 2017

Mr. Glenn Alger
3030 Vista Linda Lane
Santa Barbara, CA 93108

RE: Grading and Vegetation Clearing at 785 and 805 Toro Canyon Road

Dear Mr. Alger:

Dr. Russell forwarded a copy of your letter and email requesting that I, as the Code Enforcement Supervisor respond to your concerns regarding activities at 785 and 805 Toro Canyon Road. Planning & Development understands your concerns and appreciates the level of effort you expended to thoroughly research the biological aspects of the referenced properties. You are correct that these parcels contain designated development envelopes that were established during the processing, approval (2001) of the parcel map that created these lots and all construction, grading and other site disturbance associated with development of the proposed lots would be limited to the designated envelopes. However, when the Toro Canyon Community Plan was adopted (2004) these properties were not designated to be within the newly established Environmentally Sensitive Habitat Area Overlay Zone (ESH-TCP).

As you have been advised by Ms. Kimberley McCarthy of my staff, the activities (brushing, scraping, vegetation and tree removal) do not require zoning or building permits and therefore the property is not in violation of Chapter 35 (Zoning) of the Santa Barbara County Code. Grading Inspector, Tony Bohnett conducted a site investigation and determined that the scraping/vegetation removal did not result in grading exceeding 50 cubic yards of cut or 50 cubic yards of fill and a Grading Permit under Chapter 14 (Grading) of the County Code was not required. Pursuant to §35.20.040.B.9.a of the Land Use & Development Code (LUDC) grading which is not required to obtain a permit under Chapter 14 of the County Code is exempt from the requirement to obtain a Land Use & Development Code.


The onsite activities do not constitute development as defined within the LUDC and therefore do not require zoning permits. Activities that fall outside or are exempt from permit requirements are not and cannot be analyzed under policies of the Comprehensive Plan, including the Toro Canyon Community Plan. Furthermore, the project description adopted under TPM 14,534 specifically limits: "All construction, grading and other site disturbance **associated with the development** of the proposed lots..." (emphasis added)

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.

Attachment G

Please feel free to contact me (805 568-2071 or petra@countyofsb.org) if you have questions regarding this letter.

Sincerely,



Petra Leyva, Code Enforcement Supervisor
Building & Safety Division
Planning & Development Department

C: Dr. Glenn Russell, Director of Planning & Development