

Santa Ynez Band of Chumash Indians

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A-15

BUSINESS COMMITTEE

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September 7, 2007

C. Michael Cooney, Chair
Santa Barbara County Planning Commission
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Proposed Commission of Charles "CJ" Jackson
Hearing Date September 12, 2007

Dear Chairman Cooney:

2007 SEP -7 PM 4:37
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Planning Commissioners are public officials subject to the Political Reform Act. (See Government Code §§ 82048, 87200). They must file statements of economic interest, are subject to disqualification provisions (Government Code § 87103), and must disclose their interest and leave the room when matters affecting their interests arise.

As such, Santa Ynez Band of Chumash Indians (SYBCI) requests the disqualification of CJ in the following circumstances:

1. In all matters prior to filing a Statement of Economic Interests (so-called "Form 700").

SYBCI specifically requests a complete copy to be delivered immediately. Prior to officially releasing such Form 700 there can be no action by CJ as it is impossible to fully ascertain any conflicts of interest.

2. In all matters prior to his public renouncement of all positions with the so-called "Santa Ynez Valley Concerned Citizens"(SYVCC) and any affiliated groups.

In the Opinion of the Attorney General of the State of California , No. 86-1003, 1987 Cal. AG LEXIS 46; 70 Op. Atty Gen. Cal. 45 (March 11, 1987) (copy attached hereto as Exhibit A), a member of a School Board was forced to resign as the Executive Director of a non-profit educational organization even though the decisions of such School Board had no direct effect on his \$450 a month salary. Here CJ is the Executive Director of the SYVCC. The SYVCC have cross-membership with both Preservation of Santa Ynez (POSY) and Preservation of Los Olivos (POLO) (abstract of membership from website attached as Exhibit B). Before taking any official actions, CJ must publicly and formally disassociate himself with all 3 organizations.

3. Specifically in regards to any discussion or action taken as to the Santa Ynez Valley Community Plan ("SYVCP").

SYBCI requests that CJ identify his financial interest in the SYVCP (currently scheduled for review by the Planning Commission on Wednesday, September 12, 2007), recognize the material and specific financial benefits that he will gain from the adoption of the SYVCP and recuse himself from participation in this matter in compliance with the California Political Reform Act, CA Govt. Code 87100, et seq.

CJ and his family have an ownership interest in a large amount of Santa Barbara County real property that is south of the City of Solvang. Specifically such land surrounds the City of Solvang on its eastern and western boundaries (Exhibit C: SYV Rural Region Major Land Holdings and Large Parcels). Since one of the primary reasons given for adopting the SYVCP is to rezone various parcel of real property, including certain of those owned by CJ and his family, the participation by CJ in any discussion or decision involving the SYVCP would pose a conflict of interest under California law and he is therefore required by law to recuse himself.

One of the legislative declarations at the outset of the California Political Reform Act establishes that "Public Officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by own financial interests or the financial interests of persons who have supported them." Govt. Code 81001(b).

California Government Code section 87100 states, "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a government decision in which he knows or has reason to know he has a financial interest."

According to state law, "[a] public official has a financial interest in a decision within the meaning of Section 871000 if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or "any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management." Govt. Code 87103.

The SYVCP southern boundary includes almost half of the holdings of Palmer Jackson, CJ's father (Exhibit A above). Specifically Figure 21 of Inner-Rural/Rural Area Proposed Zoning Districts has a significant parcel of real property being rezoned from 40-AL-0 to AG-II-40 (Exhibit D; compare Figure 20 Existing Zoning Districts, Exhibit E). It therefore appears that CJ and his family have a greater economic interest in the SYVCP changes than

the public generally, and CJ is therefore required by law to recuse himself from discussing or voting on the matter. See Govt. Code 87105.

4. The Common Law prohibition against a public officer having a conflict of interest in the performance of public duties.

As explained above in the 1987 Opinion of the Attorney General of the State of California, No. 86-1003, the common law doctrine "strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public." (*46 Ops. Cal. Atty. Gen. 74, 86 (1965)*).

While this doctrine is subject to being abrogated by express statutory provisions, it is applicable where no statutory conflict exists. (*67 Ops. Cal. Atty. Gen. 369, supra, 381; 59 Ops. Cal. Atty. Gen. 604, 613-614 (1976); 58 Ops. Cal. Atty. Gen. 345, 354-356 (1975)*.)

Mr. Jackson is one of the most vocal opponents of the Santa Ynez Band of Chumash Indians – a fact that should have been taken into account when considering him for the position. After nearly a decade of fighting the tribe on virtually every project that has surfaced, I find it difficult to believe that Mr. Jackson can provide an unbiased opinion while sitting on the Planning Commission reviewing issues concerning the tribe.

The following quotes by Mr. Jackson demonstrate the biased and disrespectful manner in which he has approached tribal issues in the past:

"They want to borrow a hell of a lot of money to build [the casino]. We don't know from who, but we think it is a gaming consortium out of Minnesota. If their projections are right then that's okay, but if their projections are wrong and they have business problems, who's there to call the shots...?"

New Capitalists: Law, Politics and Identity Surrounding Casino Gaming on Native American Land - May 3, 2002

Proposition 1A was known as the Native American Self-reliance Initiative. I question whether any self-reliance has been demonstrated here in the two years since its passage or more reliance on special privilege and benefit. Or put another way, at what point are they self-reliant enough?

Santa Barbara News-Press - August 24, 2002

"I think everybody recognizes it is better than having poverty over there. The problem is nobody quite expected the Chumash would exploit it the way they have."

Los Angeles Times - December 25, 2004

"There are a host of lessons to be learned. We are by no means finished," said C.J. Jackson of the concerned citizens. "It's a set back, and we're disappointed." With this decision, the groups will not have the opportunity to argue why they are against the intensification of the Chumash property.


Santa Maria Times - February 11, 2006

Tribal gaming, and its massive financial engine, have exploited the ambiguous elements of the law at the expense of local communities across the country.

Santa Barbara News-Press- April 16, 2006

The statement that Mr. Jackson “understands how to represent a diverse number of concerns” is simply preposterous. The only concerns Mr. Jackson has ever represented are those of the Santa Ynez Valley Concerned Citizens, POLO/POSY and No More Slots – three organizations that focus only on throwing obstacles on the tribe’s road to economic self-sufficiency.

Sincerely,



Vincent Armenta
Tribal Chairman

CC: Santa Barbara County Planning Commissioners (3rd District Vacant)
Cecilia Brown
Joe H. Valencia
Daniel Blough

Santa Barbara County Board of Supervisors:
Brooks Firestone, Chair
Salud Carbajal, Vice Chair
Janet Wolf
Joni Gray
Joseph Centeno

Shane Stark, County Counsel

EXHIBIT A

LEXSEE 70 OP. ATTY GEN. CAL. 45

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA

No. 86-1003

1987 Cal. AG LEXIS 46; 70 Op. Atty Gen. Cal. 45

MARCH 11, 1987

REQUESTBY:

[*1]

JOHN K. VAN DE KAMP, Attorney General (RODNEY O. LILYQUIST, Deputy Attorney General)

OPINION:

THE HONORABLE H. L. RICHARDSON, MEMBER, CALIFORNIA STATE SENATE, has requested an opinion on the following question:

May a school board member vote upon a proposed program or contract submitted to the board by an organization of which the member is the salaried executive director?

CONCLUSION

A school board member may not vote upon, participate in considering, or attempt to influence action taken upon a proposed program or contract submitted to the board by an organization of which the member is the salaried executive director except in limited circumstances. With respect to a contract proposal, the board would generally be prohibited from entering into the contract.

ANALYSIS

An organization proposes to a school district board that a program or contract be approved involving the schools and pupils of the district. One of the board members is the salaried executive director of the organization. May the member vote on the proposal without violating the various conflict of interest laws of California? We conclude that the member would generally be prohibited from voting on such a proposal. [*2]

1. The Political Reform Act of 1974

The Political Reform Act of 1974 (*Gov. Code, §§ 81000-91015*; "Act") n1 has as one of its goals that "[p]ublic officials, whether elected or appointed should perform their duties in an impartial manner, free from bias caused by their own financial interests. . . ." (§ 81001, subd. (b).) Accordingly, the Act provides that "in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided." (§ 81002, subd. (c); see *Witt v. Morrow (1977) 70 Cal.App.3d 817, 822-823.*) The Act covers both state and local officials (§§ 81001, 2003, 87100), including school board members (*69 Ops. Cal. Atty. Gen. 102, 103, fn. 1 (1986)*).

n1 All references hereafter to the Government Code are by section number only.

Section 87100 contains the basic prohibition of the Act dealing with conflicts of interest:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Several exceptions to section 87100 allow [*3] a public official to make a governmental decision in which he has a financial interest. Section 87103, for example, expressly limits the definition of "financial interest," while section 87101 allows participation where the official's "participation is legally required for the action or decision to be made."

Extensive regulations have been promulgated by the Fair Political Practices Commission ("Commission") with respect to potential conflicts of interest. (See §§ 83111-83112; Cal. Admin. Code, tit. 2, §§ 18700-18702.2; 66 *Ops.Cal.Atty.Gen.* 156, 162, fn. 6 (1983).) The Commission also provides written advice and issues opinions which may be relied upon by public officials. (§ 83114; 67 *Ops.Cal.Atty.Gen.* 369, 374 (1984).)

While we have not been given a set of facts to consider with respect to the proposed program or contract, the case of *Witt v. Morrow, supra*, 70 *Cal.App.3d* 817, appears instructive concerning the general approach to be taken regarding the application of section 87100. In *Witt*, a member of a redevelopment agency was the salaried president and attorney of a nonprofit organization. The organization was the beneficiary of a trust that held title to property [*4] near a proposed redevelopment project. The court analyzed the possible conflict of interest as follows:

"Morrow argues there is no conflict of interest here because there is no evidence his activities as president and attorney of BEE and his receipt of \$550 per month would be affected in any way by any decision on this project. His concept of what constitutes a conflict of interest is too narrow. It is not just actual improprieties which the law seeks to forestall but also the appearance of possible improprieties. Any employee, in the private or public sector, wishes to keep his job and maintain good relations with his employer. A person who must make decisions which may affect his employer's purse is in a situation where he may not give full consideration to the merits of the decision." (*Id.*, at p. 823.)

Similarly, we believe that a school board member may not generally vote upon, participate in considering, or attempt to influence action taken upon a proposed program or contract submitted to the board by an organization of which the member is the salaried executive director. Limited exceptions to the prohibition of section 87100 may apply, and the Commission is available [*5] to provide advice on a case-by-case basis.

2. The Board's Own Code

The Act authorizes "the Legislature or any other state or local agency" to impose "additional requirements on any person if the requirements do not prevent the person from complying with" the Act's provisions. (§ 81013; see § 87102; 67 *Ops.Cal.Atty.Gen.* 369, supra, 375, fn. 5.) Section 87300 expressly requires public agencies to "adopt and promulgate a Conflict of Interest Code," which has "the force of law." (See 67 *Ops.Cal.Atty.Gen.* 369, supra, 374.)

Accordingly, the school board's own conflict of interest code may prohibit a member from voting on a proposed program or contract that would otherwise be permissible under the Act's provisions. (See § 87302, subd. (c).) Such code would require examination in light of the particular circumstances involved.

3. The Common Law Doctrine

The prohibition against a public officer having a conflict of interest in the performance of public duties has long been recognized in common law. The common law doctrine "strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to [*6] the public." (46 *Ops.Cal.Atty.Gen.* 74, 86 (1965).)

While this doctrine is subject to being abrogated by express statutory provisions, we have previously concluded that it is applicable where no statutory conflict exists. (67 *Ops.Cal.Atty.Gen.* 369, supra, 381; 59 *Ops.Cal.Atty.Gen.* 604, 613-614 (1976); 58 *Ops.Cal.Atty.Gen.* 345, 354-356 (1975).)

Exceptions to the common law doctrine exist, such as the rule of necessity (see 67 *Ops.Cal.Atty.Gen.* 369, supra, 381), and the doctrine "may usually be avoided by complete abstention from any official action with respect to or attempt to influence the transaction" (64 *Ops.Cal.Atty.Gen.* 795, 797 (1981)).

Whether the common law prohibition would prevent the school board member from voting on a proposed program or contract, otherwise permissible under the Act and the Board's own code, would depend upon the particular facts presented.

4. Section 1090

Since the proposal to the school board may concern a contract, the provisions of section 1090 require examination. (See *People v. Watson* (1971) 15 Cal.App.3d 28, 34, fn. 1; *People v. Darby* (1952) 114 Cal.App.2d 412, 428; 67 Ops.Cal.Atty.Gen. 369, supra, 375; 64 [*7] Ops.Cal.Atty.Gen. 369, supra, 375; 64 Ops.Cal.Atty.Gen. 795, supra, 797, fn. 2; 26 Ops.Cal.Atty.Gen. 287, 288-289 (1955); Widiss, The California Conflict of Interest Laws (1963) 36 So.Cal.L.Rev. 186, 198-199; Kennedy & Beck, Interest of Public Officers in Contracts Prohibited by Law (1955) 28 So.Cal.L.Rev. 335, 345; Comment, Conflict of Interest in Public Contracts in California (1956) 44 Cal.L.Rev. 355, 360-361.) n2

n2 School board members are expressly covered by the provisions of section 1090. (Ed. Code, § 35233.)

Section 1090 states in part:

"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity." n3

n3 While the statute refers to a contract being "made," this term has been expansively interpreted by the courts to cover "such embodiments in the making of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications and solicitation for bids." (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 571; *City Council of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 196; *People v. Vallerga* (1977) 67 Cal.App.3d 847, 868; *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.)

[*8]

Significantly, when section 1090 is applicable to one member of a board or commission, the proscription cannot be avoided by having the interested member abstain; the entire board or commission is precluded from entering into the contract. (*Thomson v. Call* (1985) 38 Cal.3d 633, 649; *Stigall v. City of Taft*, supra, 58 Cal.2d 565, 570-571; *City of Imperial Beach v. Bailey*, supra, 103 Cal.App.3d 191, 195.)

The Legislature has provided several exceptions to the prohibition of section 1090. In section 1091.5 are described nine situations where the "officer or employee shall not be deemed to be interested in a contract." (See *Citizen Advocates, Inc. v. Board of Supervisors* (1983) 146 Cal.App.3d 171, 178-179; *Frazer-Yamor Agency, Inc. v. Del Norte County* (1977) 68 Cal.App.3d 201, 217-218.)

In section 1091 the Legislature has described ten situations where a "remote interest" will be found, allowing the board or commission to enter into a contract "without counting the vote or votes of the officer or member with the remote interest." (See 67 Ops.Cal.Atty.Gen. 369, supra, 377, fn. 8; 65 Ops.Cal.Atty.Gen. 305, 307 (1982).) For this exception [*9] to apply, the existence of the interest must be "disclosed to the body of the board of which the officer is a member and noted in its official records." (§ 1091, subd. (a).)

Finally, we note the "rule of necessity" exception to section 1090. This rule allows a governmental agency to acquire an essential supply or service despite the conflict of interest; it allows the interested official to act where he is the only one who may do so. Similarly the board may act with the interested member abstaining in such a situation. (See *Caminetti v. Pac. Mutual L. Ins. Co.* (1943) 22 Cal.2d 344, 366-367; 69 Ops.Cal.Atty.Gen. 102, supra, 108-109; 67 Ops.Cal.Atty.Gen. 369, supra, 378; 65 Ops.Cal.Atty.Gen. 305, supra, 310.)

As with the other conflict of interest prohibitions, whether section 1090 would be applicable in a particular situation would depend upon all the facts and circumstances.

In answer to the question presented, therefore, we conclude that a school board member may not vote upon, participate in considering, or attempt to influence action taken upon a proposed program or contract submitted to the board by an organization of which the member is the salaried [*10] executive director

except in limited circumstances. With respect to a contract proposal, the board would be prohibited from entering into the contract unless the situation falls within the exceptions enumerated in section 1091.5 or the "rule of necessity."

Legal Topics:

Exhibit B

<http://www.syvconcernedcitizens.com/contactthecoalition.html>

CONTACT INFORMATION

Our diverse coalition is strong and growing.

Hundreds of individuals and groups support our campaign. We hope you will join them and us in holding all developers to the same land-use laws and environmental regulations.

Kathryn Bowen

Sue & Doug Herthel

Charles "C.J." Jackson

Preservation of Los Olivos

Preservation of Santa Ynez

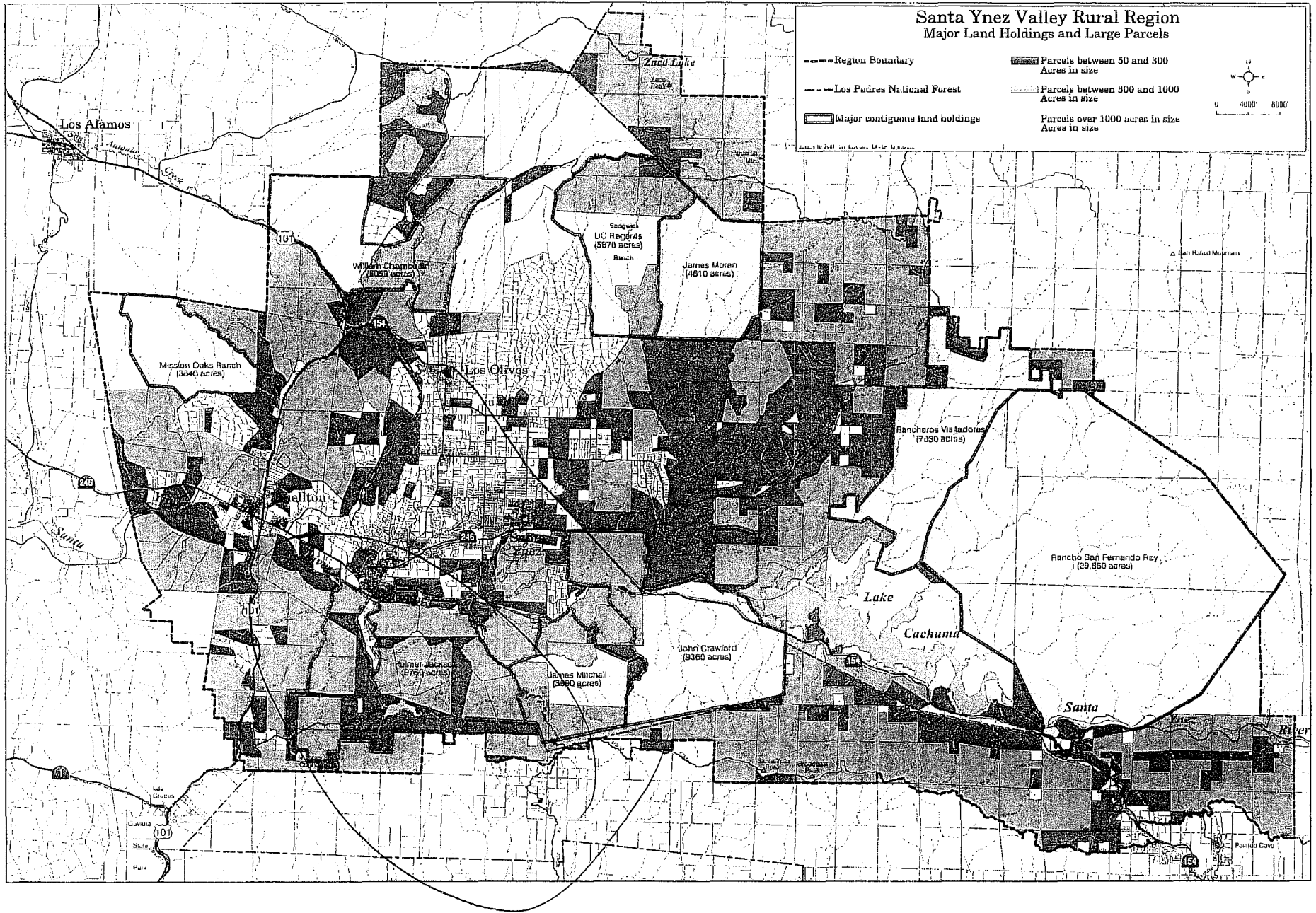


Exhibit C

Santa Ynez Valley Community Plan Inner-Rural / Rural Area Proposed Zoning Districts

- Community Plan Boundary
 - Proposed Urban Boundary
 - Proposed Zoning Boundary
 - Proposed Rural Boundary
 - Areas with Proposed Base Zoning Changes
 - Proposed EDRN (Existing Developed Rural Neighborhood)
 - Areas Rezoned for Consistency Only Townships (mapped separately)
 - Incorporated Cities (Not part of Plan)
- 0 1000 2000 3000 4000
Scale: 1" = 1000 feet
DATE: 8/2008 BY: [unreadable] CHECKED BY: [unreadable] PROJECT: [unreadable]

FIGURE 21

Exhibit D

