

SANTA BARBARA COUNTY PLANNING COMMISSION
Staff Report for Herthel-Montanaro Lot Line Adjustment Appeal

Hearing Date: August 22, 2007
Staff Report Date: August 15, 2007
Case No.: 07APL-00000-00012
Related Case No.: 05LLA-00000-00015
Environmental Document: 06NGD-29

Deputy Director: Zoraida Abresch
Division: Development Review - North
Staff Contact: Brian A. Tetley
Supervising Planner: John Karamitsos
Planner's Phone No.: (805) 934-6589

OWNER/APPLICANT:

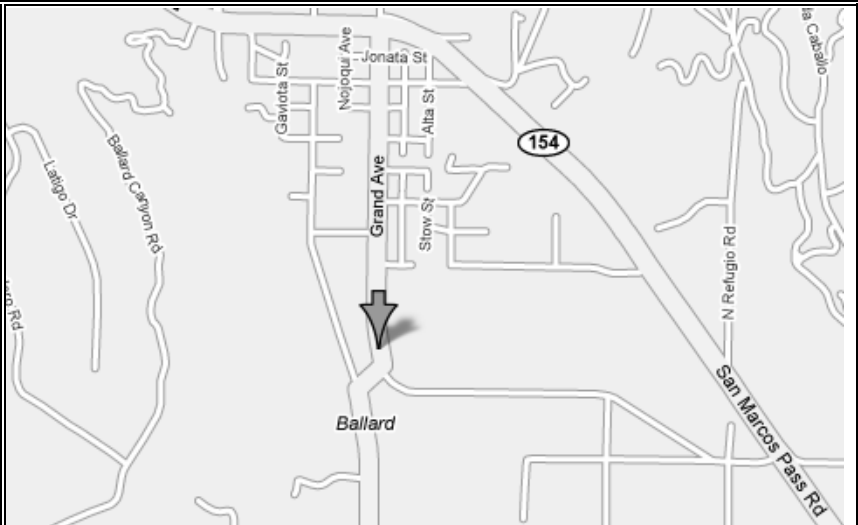
Douglas Herthel
PO Box 387
Los Olivos, CA 93441
(805) 688-2196

AGENT:

Patricia "Tish" Beltranena
201 Industrial Way
Buellton, CA 93427
(805) 688-5200

APPELLANT:

Vincent Armenta
Santa Ynez Band of
Chumash Indians
PO Box 517
Santa Ynez, CA 93460
(805) 688-7997



Assessor Parcel Numbers 135-240-079, -080 (portion), located approximately ¾ mile south of State Route 154, at 2531 Grand Avenue in the Los Olivos area, Third Supervisorial District.

Application Complete: April 21, 2005
Zoning Administrator Approval: March 26, 2007
Appeal Filed: April 4, 2007

1.0 REQUEST

Hearing on the request of Vincent Armenta, Santa Ynez Band of Chumash Indians, appellant, to consider the Appeal, Case No. 07APL-00000-00012 [appeal filed on April 4, 2007] in compliance with Section 35.102 of the County Land Use and Development Code, of the Zoning Administrator's decision to approve Lot Line Adjustment, Case No. 05LLA-00000-00015. The application involves AP Nos. 135-240-079 and -080 (portion), in the 1-E-1 Zone, located at 2531 Grand Avenue in the Los Olivos Area, Third Supervisorial District.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and deny the Appeal, Case No. 07APL-00000-00012 and approve the project, Case No. 05LLA-00000-00015 marked "Officially Accepted, County of Santa Barbara (August 22, 2007) County Planning Commission Attachment G," based upon the project's consistency with the Comprehensive Plan and based on the ability to make the required findings.

Your Commission's motion should include the following:

1. Adopt the required findings for the project, as adopted by the Zoning Administrator on March 26, 2007 (Attachment A), including the CEQA Negative Declaration (Attachment C);
2. Deny the appeal and uphold the Zoning Administrator's approval of 05LLA-00000-00015 based on the Conditions adopted by the Zoning Administrator on March 26, 2007 (Attachment B); and,
3. Grant *de novo* approval of Case No. 05LLA-00000-00015.

Refer back to staff if the County Planning Commission takes other than the recommended action for appropriate findings and conditions.

3.0 JURISDICTION

This project is being considered by the Planning Commission pursuant to Land Use and Development Code, Section 35.102.040.A.3.a., which states that decisions of the Zoning Administrator to conditionally approve an application for a Lot Line Adjustment may be appealed to the Planning Commission.

4.0 ISSUE SUMMARY

On March 26, 2007 the Zoning Administrator approved the subject 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. On April 4, 2007, this decision was appealed.

As stated by the Appellant, the grounds for the appeal are primarily related to cultural resources that may exist on the property. The appellant's issues involve the timing of archaeological testing on the property (Appeal Issues 1-4 and 6); Planning & Development's failure to consider cumulative impacts (Appeal Issues 5, 6, and 11); the potential modification of the Historic Montanaro House (Appeal Issues 7, 8 and 11); the lack of preparation of an EIR for the project (Appeal Issue 9); and the desire for additional cultural resource monitoring requirements on the project regardless of the outcome of the subsurface testing (Appeal Issue 10). A separate letter from California State University, Bakersfield's Center for Archaeological Research asserts that the Phase 1 study was inadequate.

These issues are summarized and discussed in Section 7.0, below.

5.0 PROJECT INFORMATION

5.1 Site Information

Comprehensive Plan Designation	RES-1.0, Single Family, Maximum dwelling units 1.0/acre CN, Neighborhood Commercial, no minimum lot size
Ordinance, Zoning District	1-E-1, Minimum parcel size 1-acre (5.85 acres) CN, Neighborhood Commercial, no minimum lot size (1.34 acres)
Parcel Size- Existing	05-CC-113: 1.63/1.49 gross/net acres 05-CC-114: 1.54/1.36 gross/net acres 05-CC-115: 3.79/3.36 gross/net acres
Parcel Size- Proposed	Parcel Adjusted Parcel 1: 1.77/1.63 gross/net acres Parcel Adjusted Parcel 2: 1.00/0.82 gross/net acres Parcel Adjusted Parcel 3: 4.19/3.76 gross/net acres
Present Use & Development	Residence, commercial building, barn, and shed
Surrounding Uses/Zoning	North: Vacant, agriculture, 15-R-1 South: Residential, 1-E-1 East: Residential, 15-R-1 West: Residential/Agriculture, 20-R-1 and AG-I-5
Access	Grand Avenue. An access ingress/egress easement would be recorded over Proposed Adjusted Parcel 2 in favor of Proposed Adjusted Parcel 1. Proposed Adjusted Parcels 2 and 3 would be accessible directly off of Grand Avenue.
Public Services	Water Supply: Santa Ynez River Water Conservation District Sewage: Septic system (leach line) Fire: County of Santa Barbara, Fire Station #32

5.2 Project Description

The proposal is for a lot line adjustment between three (3) legal lots created by 05-CC-113 through 05-CC-115, zoned 1-E-1, and CN (in part) in compliance with Section 21-90 of County Code Chapter 21. The application involves portions of Assessor's Parcel Number 135-240-079 and a portion of APN 135-240-080, known as the Herthel Montanaro property, located at 2531 Grand Avenue. All three of these existing, legal lots are described as follows: 1) 05-CC-113 (1.63/1.49 gross/net acres, zoned 1-E-1); 2) 05-

CC-114 (1.54/1.36 gross/net acres, zoned CN and 1-E-1); and, 3) 05-CC-115 (3.79/3.36 gross/net acres, zoned 1-E-1 and CN). The proposed Lot Line Adjustment would reconfigure these parcels to create lot lines that align with existing development and the Neighborhood Commercial Zoning. The proposed Lot Line Adjustment would create three (3) adjusted parcels as follows:

- Proposed Adjusted Parcel 1- consisting of 1.77/1.63 gross/net acres created through a reconfiguration of a portion of 05-CC-115. Zoning would entirely be 1-E-1.
- Proposed Adjusted Parcel 2- consisting of 1.00/0.82 gross/net acres created through a reconfiguration of a portion of existing 05-CC-115. Zoning would entirely be 1-E-1.
- Proposed Adjusted Parcel 3- consisting of 4.19/3.76 gross/net acres created through a reconfiguration of: a portion of 05-CC-115 (1.02/.91 gross/net acres); the entirety of 05-CC-114 (1.54/1.36 gross/net acres); and the entirety of 05-CC-113 (1.63/1.49 gross/net acres). Zoning would consist of both CN and 1-E-1.

Existing development consists of a 2,008.0 square foot (s.f.) single family residence (the Montanaro Residence) located on Proposed Adjusted Parcel 1. Additional existing development consists of a 3,737.0 s.f. commercial building, a 2,208.0 s.f. barn, and a 692.0 s.f. shed, all located on Proposed Adjusted Parcel 3. Proposed Adjusted Parcel 2 is vacant with no structural development.

Both Proposed Adjusted Parcels 1 and 3 would have existing private septic systems (leach line). Proposed Adjusted Parcel 2 would be serviced by a private septic system upon approval by Environmental Health Services. Water would be provided by the Santa Ynez River Water Conservation District.

Access to Proposed Adjusted Parcels 1, 2, and 3 would be via Grand Avenue. An access ingress/egress easement would be recorded over Proposed Adjusted Parcel 2 in favor of Proposed Adjusted Parcel 1. Proposed Adjusted Parcels 2 and 3 would be accessible directly off of Grand Avenue.

5.3 Related Project

There is a separate and distinct Lot Line Adjustment in process (05LLA-00000-00016) also on the Montanaro property involving APNs 135-200-004 and 135-180-007, north of the proposed lot line adjustment. These two lot line adjustments are separated by two intervening Montanaro lots which are not proposed for adjustment of lot lines (05-CC-111 and 05-CC-112).

5.4 Chronology

- October 19, 2005: Lot Line Adjustment application No. 05LLA-00000-00015 submitted to P&D.
- March 26, 2007: Zoning Administrator approved project.
- April 4, 2007: Applicant appeal of the Zoning Administrator approval to the Planning Commission.

6.0 PROJECT ANALYSIS

6.1 Environmental Review

A Negative Declaration was prepared for this project, 06NGD-00000-00029. The Negative adverse impacts to the environment within the Aesthetics/Visual Resources and Cultural Resource issue areas as a result of this project. For a full discussion, please refer to 06NGD-00000-00029 (Included as Attachment B).

6.2 Comprehensive Plan Consistency

The following discussion of Comprehensive Plan consistency includes all of the pertinent Comprehensive Plan policies applicable to the proposed project. No policy inconsistencies have been identified in relation to the proposed project.

REQUIREMENT	DISCUSSION
Land Use Element	
<p>Land Use Development Policy 4: <i>Adequate services and resources shall be available to serve the proposed development.</i></p>	<p>Consistent: The proposed project does not include any physical development. No increase in intensity of use is anticipated as a result of this project, as no new lots or building sites would be created. Adequate public services and resources would be available to serve the adjusted parcels as follows: a) Water Supply: Santa Ynez River Water Conservation District; b) Sewage: Septic systems (leach line); c) Fire: County of Santa Barbara, Fire Station #32; d) Access: Grand Avenue (including access easement over proposed Adjusted Parcel 2 in favor of proposed Adjusted Parcel 1). The proposed project may be found consistent with this policy.</p>

REQUIREMENT	DISCUSSION
<p>Land Use Development Policy 5: <i>Within designated urban areas, new development other than that for agricultural purposes shall be serviced by the appropriate public sewer and water district or an existing mutual water company, if such services are available.</i></p>	<p>Consistent: Adequate private and public services would serve the proposed Adjusted Parcels. The parcels would be served by the Santa Ynez River Water Conservation District for water, and septic for sewage disposal. As the proposed Lot Line Adjustment would not result in the potential for new development beyond what would otherwise be allowed currently, there will not be an increased demand for any of these resources or services and the proposed project may be found consistent with this policy.</p>
<p>Streams and Creeks Policy 1: <i>All permitted construction and grading within stream corridors shall be carried out in such a manner as to minimize impacts from increased runoff, sedimentation, biochemical degradation, or thermal pollution.</i></p>	<p>Consistent: Reconfiguration of the lot lines as a result of the proposed lot line adjustment would not increase the potential for impacts from increased runoff, sedimentation, biochemical degradation, or thermal pollution. The current configuration limits residential development locations on existing lot 05-CC-113 to areas close to Alamo Pintado Creek. The proposed adjustment would provide additional options for residential development locations to avoid proximity to Alamo Pintado Creek on proposed Adjusted Parcel 3. Furthermore, the required Flood Control development setback line necessitates a 50 foot setback from the top of bank of Alamo Pintado Creek. The proposed project may be found consistent with this policy.</p>
<p>Historical and Archaeological Sites Policies:</p> <ol style="list-style-type: none"> 1. <i>All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, prehistoric, archaeological, and other classes of cultural sites.</i> 2. <i>When developments are proposed for parcels where archaeological or other cultural sites are located, project design</i> 	<p>Consistent: Reconfiguration of the lot lines as a result of the proposed lot line adjustment would not increase the potential for impacts to historical resources known to exist on the project site. The proposed lot line adjustment would correct the current configuration in which existing lot lines bisect structures, so that structural development that is now located on multiple lots would be contained within one lot.</p> <p>The proposed lot line adjustment would create conforming lots with appropriate setbacks for</p>

REQUIREMENT	DISCUSSION
<p><i>shall be required which avoids impacts to such cultural sites if possible.</i></p>	<p>all structures from property lines and associated fence lines. The historic Montanaro Residence would be preserved on Proposed Adjusted Parcel 1, and the remaining structures, also of historic value located within the CN zoning area would be preserved together on a Proposed Adjusted Parcel 3. In addition all future development proposals on the subject parcels would be required to comply with this policy and would be subject to Planning and Development and/or Historic Landmarks Advisory Committee review to ensure potential impacts to historic resources are addressed and minimized. The proposed project may be found consistent with this policy.</p>
<p>Visual Resources Policies 3: <i>In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.</i></p>	<p>Consistent: Reconfiguration of the lot lines as a result of the proposed lot line adjustment would not lead to a change causing negative impacts to the visual character of these lots or to the surrounding neighborhood. The visual character of the area would remain substantially the same under the proposed lot line adjustment. Reconfiguration of the lot lines would not negatively impact existing structural development, and would rather benefit these resources by consolidating them onto single lots where clear responsibility as to maintenance can be assured. The proposed project may be found consistent with this policy.</p>
<p>Agricultural Element</p>	
<p>GOAL II. <u>Policy II.A.</u> <i>Santa Barbara County shall require measures designed for the prevention of flooding and silting from urbanization, especially as such damage relates to approved development.</i></p>	<p>Consistent: The proposed adjustment to the lot lines would not lead to changes causing increased potential for flooding and silting. Furthermore the proposed lot line adjustment has incorporated measures to ensure the required Flood Control District setback of 50 feet from the top of bank of Alamo Pintado Creek would minimize erosion associated with potential future development. The proposed</p>

REQUIREMENT	DISCUSSION
	project may be found consistent with this policy.
<p><i>GOAL I Policy II.D.</i> Conversion of highly productive agricultural lands whether urban or rural, shall be discouraged. The County shall support programs which encourage the retention of highly productive agricultural lands.</p> <p><i>GOAL III.</i> Where it is necessary for agricultural lands to be converted to other uses, this use shall not interfere with remaining agricultural operations.</p> <p><i>Policy III.B.</i> It is a County priority to retain blocks of productive agriculture within Urban Areas where reasonable, to continue to explore programs to support that use, and to recognize the importance of the objectives of the County's Right to Farm Ordinance.</p>	<p>Consistent: The soils underlying the entirety of the Montanaro property, including the proposed lot line adjustment are considered to be prime soils, which are viewed as highly valuable in Santa Barbara County.</p> <p>Adjacent parcels on the Montanaro property, north of the proposed adjustment are involved in active agricultural production. While soils underlying the parcels involved in the proposed lot line adjustment are highly productive, the parcels are not actively farmed, with exception of portions of parcel 05-CC-114 where some farming does take place.</p> <p>The reconfiguration of lot lines does not increase the ultimate potential developability of the lots, nor does it reconfigure the lots in a way that would increase agricultural incompatibilities associated with necessary applications of fertilizers/pesticides and other farming practices. The proposed adjustment would cause only one parcel to front upon the adjacent agricultural land to the north, with only one potential residence adjacent to this agricultural use. Under the current parcel configuration, two potential residences would be adjacent to the agricultural use, thus increasing the likelihood of residential/agricultural interface. The proposed parcel configuration would reduce this likelihood.</p> <p>In a Memorandum, dated September 15, 2006, the Agricultural Commissioner's Office, Land Use Planning Section indicated agreement with the above analysis. Thus the proposed project may be found consistent with this policy.</p>

6.3 Ordinance Compliance

6.3.1 *Land Use & Development Code, Ordinance Compliance*

The subject parcels of the proposed lot line adjustment would be zoned 1-E-1, inclusive of CN zoning on proposed Adjusted Parcel 3. All proposed adjusted parcels would be consistent with the one-acre minimum lot size and setbacks under the 1-E-1 zone district and the setback requirements under the CN zone district of the County Land Use and Development Code, and would comply with the requirements governing minor lot line adjustments. The proposed lot line adjustment would correct the current configuration in which existing lot lines bisect structures, so that structural development that is now located on multiple lots would be contained within one lot, and the Neighborhood Commercial (CN) zoning now located on multiple lots would also be contained within one lot. The proposed lot line adjustment would be consistent with the required findings of the Land Use and Development Code, Section 35.30.010 as stated in Attachment A of the staff report.

6.3.2 *Chapter 21, Subdivision Ordinance*

The proposed Lot Line Adjustment meets all subdivision standards contained in the Subdivision Ordinance §21-24(a) Lot Area, (b) Lot Width, (c) Lot Depth and (d) Lot Lines. The proposed Lot Line Adjustment would be consistent with the required findings of Chapter 21, Section 21-93 as stated in Attachment A of the staff report.

6.4 *Subdivision/Development Review Committee*

The Flood Control Division, Fire Department, Environmental Health Services Division, Roads Division, Parks Department, Building and Safety Division, and County Surveyor had the opportunity to review and comment on the proposed project during the November 10, 2005 Subdivision/Development Review Committee meeting. The Fire Department and Flood Control Division have applied conditions of approval to the proposed project and have submitted condition memoranda that have been incorporated into the conditions of approval for this project.

6.5 *Development Impact Mitigation Fees*

A series of ordinances and resolutions adopted by the County Board of Supervisors require the payment various development impact mitigation fees. Because no development is proposed at this time, no development impact fees are being required of the proposed project.

7.0 APPEAL ISSUES

The following appeal issues are summarized from the Appeal Application dated April 4, 2007 (Included as Attachment D) and an additional letter, dated July 30, 2007, from L. Suzann Henrickson, Ph.D., at California State University, Bakersfield (also included in Attachment D).

7.1 Timing of Subsurface Testing

In Appeal Issues 1 through 5 and 6, the Appellant states that a known Chumash cemetery is located in the vicinity of the Montanaro Farm, a collection of nine historically associated lots addressed in 05LLA-00000-00015 and -00016. The precise location of the cemetery is not known and it is possible that cultural resources associated with the archaeological site, CA-SBA-188, may be located on the subject property. A Phase 1 literature review and surface survey conducted by a County-listed archaeologist for the Negative Declaration did not identify any prehistoric cultural resources within the project area. However, because of the proximity of the recorded location of CA-SBA-188 and the possibility of buried resources on the site, Condition Nos. 3 and 4, imposed as Mitigation Measures 2 and 3, will provide an extended Phase 1 testing program prior to any Land Use Clearances on the lots. The purpose of the extended testing program would be to assess the presence or absence of subsurface cultural materials within specific areas to be disturbed by development. If the testing program yields cultural materials, additional work would be conducted as specified in the County of Santa Barbara Resource Management Department, Regulations Governing Archaeological and Historical Projects undertaken in conformance with the California Environmental Quality Act and Related Laws: County Cultural Resource Guidelines (Cultural Resource Guidelines).

The Appellant requests that the subsurface testing be conducted prior to recordation of the deed for the Lot Line Adjustment, rather than in conjunction with Land Use Clearance applications. In support of this request, the Appellant cites a letter from Dr. Michael Glassow, Professor of Archaeology at the University of California, Santa Barbara, dated 03/20/07 (included as Attachment D, Exhibit A, letter 6). The Appellant also cites the CEQA case *Sundstrom vs. the County of Mendocino* as requiring that the testing mitigation measure associated with the Mitigated Negative Declaration be conducted during the discretionary case (LLA) rather than subsequent ministerial cases (Land Use Permits). Further, in Appeal Issue 10, the Applicant cites CEQA Guidelines Subsection 15126.4(b)(3)(C):

When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provisions for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken.

The Appellant also requests that regardless of the timing of the subsurface testing program, that it be required to include controlled backhoe lifts completed subject to Planning & Development approval.

Staff Response

All parties agree that an extended Phase 1 testing program is appropriate to assess the presence or absence of cultural resources on the subject property prior to any ground disturbance associated with development. 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 are known. Such deferral would allow specific testing of areas proposed for development rather than disturbance of the entire property (potentially resulting in less ground disturbance onsite); and would thus be more time and cost efficient. If cultural resources are identified during the testing program, then County Cultural Resource Guidelines and Section 15126.4 of the CEQA Guidelines require that they be evaluated for significance and feasible mitigation measures identified. The Applicant has agreed to this condition.

With regard to the Sundstrom citation, staff considers the existing Phase 1 study to be adequate for the discretionary phase of the Lot Line Adjustment. No *in situ* prehistoric cultural resources were identified as a result of the Phase 1 surface survey. Conditions imposed on the LLA ensure that subsurface testing and either avoidance or appropriate follow-on work will occur prior to any future development on the Montanaro Farm. The size and configuration of the adjusted lots virtually ensure that if resources are encountered during subsurface testing then appropriate alternate locations can be identified to avoid any impacts to cultural resources.

As stated above, CEQA Guidelines Subsection 15126.4 (b) (3) (C), applies when data recovery through excavation is the only feasible mitigation. It also requires that the data recovery is conducted prior to excavation associated with development. The existing conditions placed on 05LLA-00000-00015 are consistent with this requirement. Specifically, if the extended Phase 1 testing program is conducted after potential development sites have been proposed, and subsurface remains are identified, then relocation of the development envelopes would likely be a feasible mitigation measure. By definition, avoidance is the most effective means of mitigating site impacts. If relocation of development envelopes is not a feasible option, and data recovery through excavation is the only feasible mitigation, then mitigation of impact excavations (Phase 3 study) would be conducted prior to any development.

The Appellant requests that the any subsurface testing program, include controlled backhoe lifts completed subject to Planning & Development approval. This is standard procedure in areas of rapid alluvial accumulation (adjacent to watercourses), in areas with imported fill, in vegetated areas, or other situations where the likelihood of buried resources must be considered [County Cultural Resource Guidelines, Phase 1 Prehistoric Archaeological and Historical Projects, Section 3.1 (g)].

Carefully controlled backhoe trenching with occasional screening of five-gallon buckets of soil from the lifts is sometimes used by professional archaeologists to identify the location of subsurface deposits in the circumstances cited above. This is most often the case when defining site boundaries or when the presence of peripheral site deposits is uncertain. In this case, backhoe trenching was originally recommended by staff when testing was timed to occur before

deed recordation. The reason for the recommendation was that this larger scale of testing is more time and cost efficient than shovel test probes for assessing a large geographic area. However, compared to shovel test probes or excavation units, backhoe testing is a much less fine-grained method of presence-absence testing. For this reason it is less appropriate for testing conducted for individual Land Use Clearance applications, which would address smaller, defined development envelopes. Consequently, this condition was not adopted by the Zoning Administrator.

7.2 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, approximately three-acre lots. 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.

7.3 Potential Modification of the Montanaro House

The Appellant is concerned about potential future modification of the Montanaro House.

Staff Response

No application for modification of the Montanaro House is currently on file with the County, nor would such action be permitted by the Lot Line Adjustment.

However, a Historic Resources Letter Report was prepared for 2531 Grand Avenue, Los Olivos (Montanaro House and associated structures) by a County-listed historian in June of 2007. The report recommends that a Phase I/II Historic Resources Report be prepared for the property to fully evaluate its historic significance and the potential impact of any future development on the property. A Phase I/II Historic Resources Study is currently in progress for the Montanaro House. Any future permit applications for this property will be informed by the results of the study.

7.4 Lack of EIR

The Appellant states that since the Zoning Administrator found a substantial probability of subsurface cultural resources on the Montanaro Farm, an EIR should be prepared for the project per CEQA Guidelines Section 15064(g), as follows:

(g) After application of the principles set forth above in Section 15064 (f) and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Staff Response

No *in situ* prehistoric cultural resources were identified as a result of the Phase 1 surface survey. 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 will be mitigated to less than significant.

The lot line adjustment will not cause a substantial adverse change in the Montanaro House. Any future work affecting the house will be informed by the Phase 2 Historic Resources study now in progress.

7.5 Lack of Monitoring Plan

The Appellant requests a monitoring plan for sites and objects of cultural significance during any excavation and future construction. The specific request is that all Phase 1 extended studies and any future excavation and construction on any portion of the property shall require a Native American observer to be present at all times along with an archaeologist if required by Planning & Development.

Staff Response

County Cultural Resource Guidelines require that any testing or mitigation of impact excavations within or in close proximity to an archaeological site be monitored by a Native American observer. Thus all archaeological excavations for this project would include Native American monitoring as specified in Conditions No. 3 and 4 of 05LLA-00000-00015.

If extended Phase 1 testing of specific proposed development envelopes has negative results, then no additional construction monitoring is necessary. The project has been conditioned to ensure that no construction could occur in previously untested areas.

7.6 Adequacy of Phase 1 Study

The appellant requested that L. Suzann Henrikson, Ph.D., Associate Director for the Center for Archaeological Research at California State University, Bakersfield, conduct a peer review of the archaeological Phase 1 study for the subject property (August 2, 2007 included in Attachment D). Dr. Henrikson concluded that “sufficient concerns exist on the Montanaro Farm to warrant systematic subsurface exploration to determine the presence or absence of cultural resources.”

Staff Response

All parties agree that additional subsurface testing to determine the presence or absence of cultural resources is appropriate. Condition No. 3 if the LLA (included in Attachment C) requires additional systematic subsurface testing prior to approval of any Land Use Clearance, as follows:

The Phase 1 Archaeological Study prepared for the project site shall be supplemented by limited subsurface testing conducted by a County-listed Archaeologist, monitored by a Native American observer, and approved by P&D. Any cultural materials identified as a result of the limited subsurface testing shall be: 1) avoided; or 2) evaluated and treated pursuant to County Archaeological Guidelines.

8.0 APPEALS PROCEDURE

The action of the Planning Commission may be appealed to the Board of Supervisors within ten (10) calendar days of said action.

9.0 ATTACHMENTS

- A. Findings for Lot Line Adjustment Approval*
- B. Final Mitigated Negative Declaration dated 03/26/07
- C. Conditions of Approval with attached Departmental letters (Fire, PW Flood Control)*
- D. Appeal application and attachments, dated April 4 and August 2, 2007
- E. Zoning Administrator Action letter, dated 03/28/07
- F. Zoning Administrator Memorandum dated 03/15/07 (Attachments A and C omitted)
- G. Preliminary Lot Line Adjustment Exhibits 1 - 5

*Note: Conditions and Findings were completed prior to adoption of the Land Use and Development Code and refer to Article III. *De Novo* approval would result in replacement with appropriate references to the Land Use and Development Code.

ATTACHMENT A: FINDINGS

1.0 CEQA FINDINGS

- 1.1** The Planning Commission has considered the Mitigated Negative Declaration (06NGD-00000-00029) together with the comments received and considered during the public review process. The Negative Declaration reflects the independent judgment of the Planning Commission, has been completed in compliance with CEQA, and is adequate for this proposal.
- 1.2** The Planning Commission finds that through feasible conditions placed upon the project, the potentially significant impacts on the environment have been eliminated or substantially mitigated.
- 1.3** The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Secretary of the Santa Barbara County Planning Commission, Ms. Dianne Black, Planning and Development, located at 123 East Anapamu Street, Santa Barbara, CA 93101.
- 1.4** Public Resources Code Section 21081.6 requires the County to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to mitigate or avoid significant effects on the environment. The approved project description and conditions of approval, with their corresponding permit monitoring requirements, are hereby adopted as the monitoring program for this project. The monitoring program is designed to ensure compliance during project implementation.

2.0 ADMINISTRATIVE FINDINGS

Pursuant to Article III, Section 35-134 and Chapter 21, Section 21-93 of the Subdivision Regulations, a Lot Line Adjustment application shall only be approved provided the following Findings are made:

- 2.1 The Lot Line Adjustment is in conformity with the County General Plan and purposes and policies of Chapter 35 of this code, the Zoning Ordinance of the County of Santa Barbara.**

Pursuant to the discussion in Sections 5.2 (Comprehensive Plan Consistency) and 5.3 (Ordinance Compliance) of the Staff Reports (dated September 15, 2006, January 5 and March 15, 2007), the Lot Line Adjustment is consistent with these policies and provisions of the General/Comprehensive Plan and Zoning Ordinance/Land Use Development Code. None of the three affected parcels will be nonconforming as a result of the Lot Line Adjustment. Structural development that currently straddles lot lines will be contained within one lot, and the Neighborhood Commercial (CN) zoning now located on multiple lots will also be contained within one lot. Therefore the project is consistent with this finding.

2.2 No parcel involved in the Lot Line Adjustment that conforms to the minimum parcel size of the zone district in which it is located shall become nonconforming as to parcel size as a result of the Lot Line Adjustment.

The parcels will comply with the minimum lot size requirements, each over the one acre minimum parcel size. Therefore the project is consistent with this finding.

2.3 Except as provided herein, all parcels resulting from the Lot Line Adjustment shall meet the minimum parcel size requirement of the zone district in which the parcel is located. A Lot Line Adjustment may be approved that results in nonconforming (as to size) parcels provided that it complies with subsection 2.4 or 2.5 listed below:

The Lot Line Adjustment satisfies all of the following requirements:

i. Four or fewer existing parcels are involved in the adjustment;

Three parcels are involved in this Lot Line Adjustment. Therefore the project is consistent with this finding.

ii. The Lot Line Adjustment shall not result in increased subdivision potential for any affected parcel; and,

An increase in subdivision potential or residential developability will not occur as a result of the Lot Line Adjustment. Potential developability as a result of the proposed parcel configurations could include two new residences: a new residence on each of Adjusted Parcels 2 and 3. Adjusted Parcel 1 is currently developed with a single family dwelling.

With approval of a Tentative Parcel Map, there is potential for subdivision on Adjusted Parcel 3. Under the base zoning (predominately 1-E-1), this parcel could technically be subdivided to create 2 new parcels. However, practically this is an unlikely scenario as the potential parcel configurations would be highly irregular in shape and would include severe constraints including limitations due to Flood Control setbacks from Alamo Pintado Creek located in the western half of the property.

As discussed in Section 4.0 of the Staff Report for Lot Line Adjustment 05LLA-00000-00015, a total of 5 parcels and 4 additional residences have the potential to be developed under the current and proposed parcel configurations and zoning. No net change or increase in subdivision potential or residential developability will occur. Therefore the project is consistent with this finding.

iii. The Lot Line Adjustment shall not result in a greater number of residential developable parcels than existed prior to the adjustment. For the purposes of this subsection only, a parcel shall not be deemed residentially developable if the documents reflecting its approval and/or creation identify that: 1) the parcel is not a building site, or 2) the parcel is designated for a non-residential purpose including,

but not limited to, well sites, reservoirs and roads. A parcel shall be deemed residentially developable for the purposes of this subsection if it has an existing single-family dwelling constructed pursuant to a valid County permit.

One parcel (05-CC-115) is currently developed with a single family dwelling. The remaining two parcels (05-CC-113 and 05-CC-114) are undeveloped; however these parcels are residentially developable. The Lot Line Adjustment will not change the number of residentially developable parcels. Therefore the project is consistent with this finding.

- 2.4 The parcels involved in the adjustment are within the boundaries of an Official Map for the Naples Townsite adopted by the County pursuant to Government Code Section 66499.50 et seq. and the subject of an approved development agreement certified by the California Coastal Commission as an amendment to the Santa Barbara County Local Coastal Program that sets forth the standards of approval to be applied to Lot Line Adjustments of existing adjacent parcels within the boundaries of the Naples Townsite Official Map. This exception provision shall expire 5 years after its effective date unless otherwise extended pursuant to a certified amendment to the Santa Barbara County Local Coastal Program.**

The parcels involved are located in the Los Olivos area and not within the boundaries of an Official Map for the Naples Townsite. Therefore the project is consistent with this finding.

- 2.5 The Lot Line Adjustment will not increase any violation of parcel width, setback, lot coverage, parking or other similar requirement of the applicable zone district or make an existing violation more onerous.**

The lot line adjustment will eliminate structural development and zoning that currently straddle multiple lots lines. Structural development that currently straddles multiple lots will be contained within one lot, and the Neighborhood Commercial (CN) zoning now located on multiple lots will also be contained within one lot. Therefore the project is consistent with this finding.

- 2.6 The subject properties are in compliance with all laws, rules and regulations pertaining to zoning uses, setbacks and any other applicable provisions of this Article or the Lot Line Adjustment has been conditioned to require compliance with such rules and regulations and such zoning violation fees imposed pursuant to applicable law have been paid. This finding shall not be interpreted to impose new requirements on legal non-conforming uses and structures under the respective County Ordinances: Article III (Section 35-161 and 35-162).**

All adjusted parcels are in compliance with all provisions of Article III. The Lot Line Adjustment will correct the current configuration in which existing lot lines bisect structures and zoning lines. Structural development that currently straddles multiple lots will be contained within one lot, and the Neighborhood Commercial (CN) zoning now located on

multiple lots will also be contained within one lot. Therefore the project is consistent with this finding.

2.7 Conditions have been imposed to facilitate the relocation of existing utilities, infrastructure and easements.

No existing utilities, infrastructure and easements will need to be relocated to accommodate the proposed lot line adjustment. A new access easement will be created over Adjusted Parcel 2 in favor of Adjusted Parcel 1, as shown on the preliminary map and required by Conditions of Approval. Therefore the project is consistent with this finding.

2.8 A Lot Line Adjustment proposed on agricultural zoned parcels which are under Agricultural Preserve Contract pursuant to the County Agricultural Preserve Program Uniform Rules shall only be approved provided the following findings are made:

The subject Parcels are not under Agricultural Preserve Contract. Therefore the project is consistent with this finding.

ATTACHMENT C: CONDITIONS OF APPROVAL **05LLA-00000-00015**

I. PROJECT DESCRIPTION

This Lot Line Adjustment is based upon and limited to compliance with the project description, the hearing exhibit marked Exhibit #1, dated September 25, 2006, and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.

1. The project description is as follows:

The proposal is for a lot line adjustment between three (3) legal lots created by 05-CC-113 through 05-CC-115, zoned 1-E-1, and CN (in part) under Article III, under the provisions of Chapter 35. The application involves portions of Assessor's Parcel Number 135-240-079 and a portion of APN 135-240-080, known as the Herthel Montanaro property, located at 2531 Grand Avenue. All three of these existing, legal lots are described as follows: 1) 05-CC-113 (1.63/1.49 gross/net acres, zoned 1-E-1); 2) 05-CC-114 (1.54/1.36 gross/net acres, zoned CN and 1-E-1), and 3) 05-CC-115 (3.79/3.36 gross/net acres, zoned 1-E-1 and CN). The proposed Lot Line Adjustment would reconfigure these parcels to create lot lines that align with existing development and the Neighborhood Commercial Zoning. The proposed Lot Line Adjustment would create three (3) adjusted parcels as follows:

- Proposed Adjusted Parcel 1- consisting of 1.77/1.63 gross/net acres created through a reconfiguration of a portion of 05-CC-115. Zoning would entirely be 1-E-1.
- Proposed Adjusted Parcel 2- consisting of 1.00/0.82 gross/net acres created through a reconfiguration of a portion of existing 05-CC-115. Zoning would entirely be 1-E-1.
- Proposed Adjusted Parcel 3- consisting of 4.19/3.76 gross/net acres created through a reconfiguration of: a portion of 05-CC-115 (1.02/.91 gross/net acres); the entirety of 05-CC-114 (1.54/1.36 gross/net acres); and the entirety of 05-CC-113 (1.63/1.49 gross/net acres). Zoning would consist of both CN and 1-E-1.

Existing development consists of a 2,008.0 square foot (s.f.) single family residence (the Montanaro Residence) located on Proposed Adjusted Parcel 1. Additional existing development consists of a 3,737.0 s.f. commercial building, a 2,208.0 s.f. barn, and a 692.0 s.f. shed, all located on Proposed Adjusted Parcel 3. Proposed Adjusted Parcel 2 is vacant with no structural development.

Both Proposed Adjusted Parcels 1 and 3 would have existing private septic systems (leach line). Proposed Adjusted Parcel 2 would be serviced by a private septic system upon approval by Environmental Health Services. Water would be provided by the Santa Ynez River Water Conservation District.

Access to Reconfigured Lots 1, 2, and 3 would be via Grand Avenue. An access ingress/egress easement would be recorded over Proposed Adjusted Parcel 2 in favor of Proposed Adjusted Parcel 1. Proposed Adjusted Parcels 2 and 3 would be accessible directly off of Grand Avenue.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the conditions of approval hereto. All plans submitted for review and approval shall be implemented as approved.

II. MITIGATION MEASURES FROM 06NGD-00000-00029

2. Outdoor Lighting

All exterior night lighting installed on the project site shall be of low intensity, low glare design and shall be hooded to direct light downward onto the subject parcel and prevent spill-over onto adjacent parcels. **Plan Requirements/Timing:** This condition shall be printed on all building and grading plans.

MONITORING: P&D shall check plans prior to approval of Land Use Permits and shall spot check in the field.

3. Archaeological Study

The Phase 1 Archaeological Study prepared for the project site shall be supplemented by limited subsurface testing conducted by a County-listed Archaeologist, monitored by a Native American observer, and approved by P&D. Any cultural materials identified as a result of the limited subsurface testing shall be: 1) avoided; or 2) evaluated and treated pursuant to County Archaeological Guidelines. **Plan Requirements/Timing:** Prior to Land Use Permit approval for any development requiring ground disturbance, the results of limited subsurface testing shall be provided to P&D. The limited subsurface testing is required to assess the presence or absence of cultural materials within the lot(s). The work and report shall be completed according to County guidelines for an Extended Phase 1. The work shall be conducted by a qualified archaeologist and subsurface investigations shall be monitored by a Native American Observer.

MONITORING: The County-listed archaeologist shall coordinate with P&D personnel on submittal and review of the required study. P&D compliance personnel shall field check during grading and construction activities to ensure compliance with approved plans and conditions.

4. Archaeological Discovery

In the event archaeological remains are encountered during ground disturbance, work shall be stopped immediately or redirected until a P&D qualified archaeologist and Native American

representative are retained by the applicants to evaluate the significance of the find pursuant to Phase 2 investigations of the County Archaeological Guidelines. If remains are found to be significant, they shall be subject to a Phase 3 mitigation program consistent with County Archaeological Guidelines and funded by the applicants. **Plan Requirements/Timing:** This condition shall be printed on all building and grading plans.

MONITORING: P&D shall check plans prior to approval of Land Use Permits and shall spot check in the field.

III. PROJECT SPECIFIC CONDITIONS

5. Departmental Conditions

Compliance with Departmental memoranda and conditions:

- a. Flood Control District memorandum dated November 9, 2005
- b. Fire Department memorandum dated November 23, 2005

IV. LOT LINE ADJUSTMENT CONDITIONS

6. Two copies of the document that will be recorded to effectuate the lot line adjustment and any required review fees in effect at the time, shall be submitted to Planning and Development (P&D) for compliance review of P&D conditions before P&D will issue clearance for recordation to the County Surveyor.
7. The Lot Line Adjustment 05LLA-00000-00015 shall expire three years after approval or conditional approval by the final decision maker unless otherwise provided in the Subdivision Map Act, Government Code §66452.6.
8. The following language shall be included on the deeds arising from the lot line adjustment:

This deed arises from the lot line adjustment 05LLA-00000-00015 and defines a single parcel within the meaning of California Civil Code §1093. Any document used to record the lot line adjustment shall include a statement that the document arises from a lot line adjustment that is intended to identify two legal parcels.

The document used to record the Lot Line Adjustment shall state the findings and Conditions of Approval of the lot line adjustment.

9. A notice of the Lot Line Adjustment shall be recorded with the deed of each property to be adjusted. Said notice shall include the following:
 - a. Legal description for each adjusted parcel; and
 - b. Statement of the findings and conditions approving the Lot Line Adjustment

V. COUNTY RULES AND REGULATIONS

10. Prior to recordation, the applicant shall pay all applicable P&D permit processing fees in full.

11. Indemnity and Separation Clauses

Developer shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of the Lot Line Adjustment. In the event that the County fails promptly to notify the applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

12. Legal Challenge

In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the County and substitute conditions may be imposed.