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November 6, 2020

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

**Re: Alger Appeal of Planning Commission Approval of Frampton Lot Line
Adjustment and Recorded Map Modification 19LLA- 00000-00003 & 19RMM-
00000-00001**

Dear Honorable Supervisors,

Our office represents the owner and Applicant, Mr. Kevin Frampton. Unfortunately, this project comes before you despite great efforts made by Mr. Frampton and the Planning Commission to accommodate the immense and last minute requests made by the Appellant, Mr. Alger, and his attorney, Ms. Petrovich, during two Planning Commission hearings. Appellant remained dissatisfied with the result and appeals the approval of Applicant’s request for a Lot Line Adjustment and Recorded Map Modification (LLA & RMM) to your Board.

The request made by Applicant is straightforward:

- (1) A Lot Line Adjustment (LLA) in compliance with Section 21-90 of County Code Chapter 21 and Section 35.30.110 of the County Land Use and Development Code (LUDC) to adjust lot lines between two lots of 2.0 and 10.67 acres respectively; and
- (2) A Recorded Map Modification (RMM) to modify Tentative Parcel Map 14,534 in compliance with Section 21-15.9 of Chapter 21 Land Division to modify the existing development envelopes on the property.

Mr. Alger’s appeal ultimately has nothing to do with the LLA & RMM application before you. Mr. Alger’s appeal stems from unrelated dead brush clearing and erosion control activities that occurred on Applicant’s property in 2017. Activities which Mr. Alger complained about and claimed were illegal at that time and which the County concluded were not a violation of County Code or any prior Conditions of Approval applicable to the property.

Mr. Alger's primary concern appears to be centered around an upper portion of Applicant's property partially visible from Mr. Alger's property. This area is accessed via a roadway on Mr. Frampton's property that has existed at the very least since 1994 (see aerial imagery attached to letter submitted by Mr. Mark Lloyd on November 6, 2020). The Planning Commission conditioned the project extensively to preserve and protect native vegetation in the long term which is Mr. Alger's stated goal. Mr. Alger has also stated he does not oppose the project but despite this is continuing to request the County impose consequences to prior legal activity through this appeal.

Factual History

Despite what Mr. Alger and Ms. Petrovich claim to be true, the relevant facts are as follows:

- In 2001, a prior owner applied for and the County approved a lot split to divide a 12.72 acre parcel into two parcels of 2.0 and 10.72 acres (the 2001 Lot Split). In preparation for this approval the prior owner further improved an existing roadway to access the upper portion of the property to conduct drywell testing.
- In years following approval of the 2001 Lot Split, aerial imagery shows that the prior owner conducted brush clearing from time to time.
- The prior owner conceptually reviewed potential development on the property with the South County Board of Architectural Review (SBAR). Due to revised zoning on the site and policies in the newly adopted Toro Canyon Community Plan, SBAR recommended the development envelopes on the property be further setback from one another. Such recommendation is what led to the current LLA & RRM request.
- As years went on it appears the property was neglected and, in certain locations, became a dumping ground for various waste and trash although by whom is unknown.
- Starting in late 2016, in preparation of his purchase, Mr. Frampton evaluated the property with Mr. Ed Foster of the Carpinteria Summerland Fire District who expressed concern over the dead eucalyptus trees, old downfall logs, dry brush, etc. on site. Mr. Ed Foster was appreciative of Mr. Frampton's commitment to remove such fire hazards. In late 2016, SCE removed dead eucalyptus trees along Toro Canyon Road including in front of the property and surrounding power lines.
- In early 2017, Mr. Frampton closed on the property and applied for, and the County approved, an Erosion Control Permit. Mr. Frampton proceeded with permitted work as well the removal of dead brush and trees on the property. Mr.

Frampton received a final sign off after inspection from the County in late April 2017.

- In July 2017, Mr. Alger logged a complaint with the County regarding activities on Mr. Frampton's property claiming violation with the County Code, the Toro Canyon Community Plan and the 2001 Lot Split conditions. Mr. Alger included a report from botanist Ms. Tamara Klug who had observed the site from afar through binoculars and opined that Environmentally Sensitive Habitat (ESH) was removed from the property. Ms. Klug never entered the property nor viewed vegetation up close. Ms. Klug deduced the habitat that may have been removed during vegetation clearing. Mr. Alger requested, among other things, that Mr. Frampton be required to remediate the removal of ESH in accordance with requirements in the Toro Canyon Community Plan.
- The County reviewed the complaint and in August 2017 Ms. Petra Leyva issued a letter to Mr. Alger explaining: (1) "the activities (brushing, scraping, vegetation and tree removal) do not require zoning and building permits and therefore the property is not in violation ... of the Santa Barbara County Code"; (2) "[the County] conducted a site visit and determined that ... a Grading Permit ... was not required" because the scraping/vegetation removal did not result in grading exceeding 50 cubic yards of cut or fill; (3) the 2001 Lot Split conditions were not violated; and (4) noted that when the Toro Canyon Community Plan was adopted in 2004 these properties were not designated to be within the newly established Environmentally Sensitive Habitat Area Overlay Zone (ESH-TCP). (See Attachment A - County Letter; Attachment B - Figure 17 from the Toro Canyon Community Plan).
- Mr. Alger did not appeal the County's determination nor attempt to advance further remedies otherwise available to him. The County closed the file with no violations found.

Now, years later, Mr. Alger is using the same claims to taint what is otherwise a straightforward project. Starting a few days before the Planning Commission review of the LLA & RMM, Appellant's attorney Ms. Petrovich submitted comments which, again, falsely stated Mr. Frampton illegally cleared the property. Through a series of two Planning Commission meetings Ms. Petrovich argued the Mitigated Negative Declaration (MND) was inaccurate and incomplete, provided the Planning Commission with lengthy edits to the conditions of approval, demanded restoration of native habitat based prior legal activities and removal of a roadway that has existed onsite for decades.

In anticipation of the continuation of all previous arguments, we address them below.

The Mitigation Negative Declaration is Adequate

The project before you is a request for an LLA and a RMM, it does not - nor must it - include prior legal vegetation removal and erosion control activities done for fire protection and maintenance purposes. Those activities were taken under separate permit or permit exemption and independently from the project at issue – these activities are not related to nor stem from the the LLA and RMM. Any claim that failure to include these activities in the project description is segmentation under the California Environmental Quality Act (CEQA) is simply not true or supported by case law.

Further, CEQA does not dictate that the environmental baseline date back to a time prior to such vegetation removal and erosion control activities. To assess the changes to the environment that will result from a proposed project, the County is correct to treat existing conditions as the environmental baseline against which the project’s changes to the environment are measured. 14 Cal Code Regs §15125. Existing physical conditions are determined at the time the environmental analysis begins. *Id.* There is not sufficient evidence in the record or sufficient justification to warrant deviating from existing environmental conditions. Preparation of a CEQA document is not the appropriate forum for determining the nature and consequences of the prior conduct of a project applicant (*Riverwatch v. County of San Diego* (1999) 76 CA4th 1428, 1451; see also *Eureka Citizens for Responsible Gov’t v. City of Eureka* (2007) 147 CA4th 357; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 CA4th 1209, 1233.

Requests for Habitat Restoration and Roadway Removal is Unjustified

Mr. Alger’s request to require restoration of the hillside he claims were disturbed and removal of the roadway is not justified. These requests have no nexus to the LLA and RRM application at issue.

Mr. Frampton legally removed dead brush and vegetation from his property. Such actions did not include mass destruction of ESH despite previous and continued attempts to prove otherwise. Further, replanting of native habitat is not needed for long term success of vegetation on site. Mr. Frampton’s own biologist, Mr. Larry Hunt stated in a letter submitted to your Board “[s]ince the dead and dying trees were removed, coastal sage 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.” (See Attachment C) Further, the conditions of approval the Planning Commission unanimously approved, and which my client does not dispute, protect sensitive habitat on the property and will further ensure habitats continue to grow and flourish. As stated by your staff in the Board letter, “[t]he proposed project is conditioned with mitigation measures to protect sensitive species on site in a way that is more restrictive and more protective of sensitive habitat areas that what is currently permitted by the approved [Tentative Parcel Map].”

Removal of an existing roadway that not only provides for critical emergency and fire access but also may be used by the property owner for passive activities such as walking and enjoyment is unjustified. Mr. Frampton is not proposing to use the road for development of the upper portion of the property. Despite Mr. Alger's concern, no further development can occur outside the designated development envelopes and any future request to do so would be subject to the County's extensive scrutiny and review pursuant to CEQA. While Mr. Alger's may have his own privacy concerns, he cannot prevent Mr. Frampton from walking on, enjoying and maintaining his own property.

We agree with your staff and request you deny the appeal and grant de novo approval of the project. Thank you for your consideration of this matter and your time.

Sincerely,

FAUVER, LARGE, ARCHBALD & SPRAY, LLP

A handwritten signature in black ink, appearing to read 'O. Marr', written over a horizontal line.

Olivia K. Marr, Partner

OKM/kbm

Attachments:

Attachment A – County Letter

Attachment B – Figure 17 from Toro Canyon Community Plan

Attachment C – Letter from Mr. Larry Hunt



**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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Petra Leyva". The signature is written in a cursive style with a large initial "P".

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

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

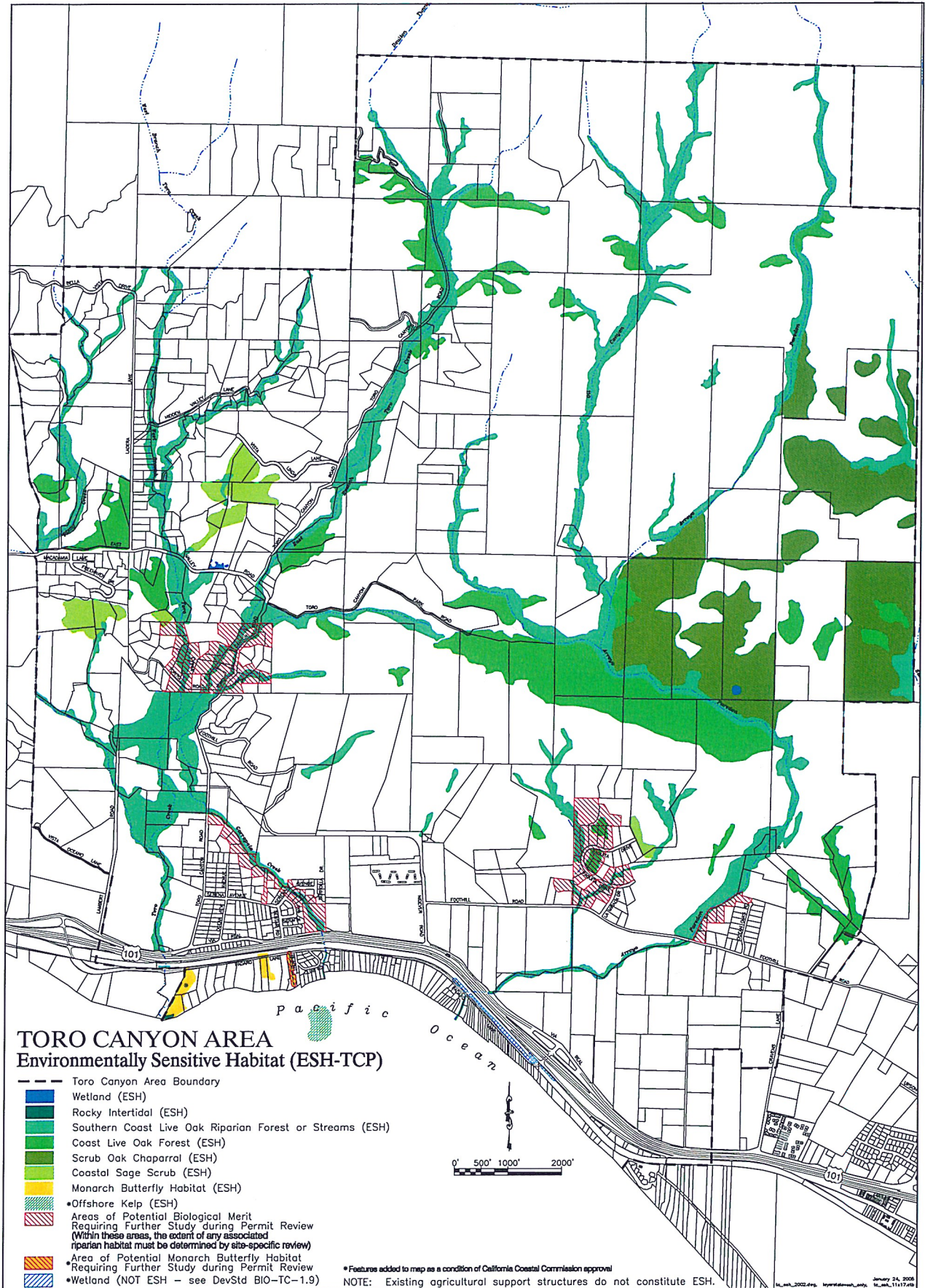


Figure 17

**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

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