

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: October 24, 2002
Department Name: P&D
Department No.: 053
Agenda Date: November 5, 2002
Placement: Administrative
Estimate Time: N/A
Continued Item: NO
If Yes, date from:
Document File Name: F:\GROUP\Permitting\Case Files\Mpc\02 cases\02mpc-00000-00002 Phillips-Berkshire\BD Agenda Ltr.doc

TO: Board of Supervisors

FROM: Dianne Meester, Interim Director
Planning and Development

STAFF CONTACT: Patty Miller, Supervising Planner (568-2054)
Steve Goggia, Planner III (568-2067)

SUBJECT: Acknowledge Offer to Dedicate an Open Space Easement for the Montecito Ranch Estates (Formerly known as Summerland Ranch), TM 14,290

Recommendation:

That the Board of Supervisors:

- A. Adopt the Resolution of Findings (Attachment A) accepting and approving the Grant of Open Space Easement.
- B. Accept the CEQA Section 15317 Categorical Exemption for the Grant of Open Space Easement.
- C. Sign the Grant of Open Space Easement (Exhibit 1 to Attachment A) and direct its recordation concurrent with the recordation of TM 14,290.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with ensuring a high quality of life for all residents, and actions required by law or by routine business necessity.

Executive Summary and Discussion: The eight-lot subdivision for the parcel (TM 14,14,290), also known as the Summerland Community Plan White Hole Area B, was originally approved by the Board of Supervisors on November 23, 1993. On December 3, 2001, the Planning Commission approved a five-year time extension pursuant to Government Code Section 66452.6(e) of the Subdivision Map Act. The time extension would allow recordation to occur up to November 23, 2002.

Action LU-S-WH-5.1 of the Summerland Community Plan requires development rights to the easement area to be dedicated as part of the discretionary approval process to the County of and/or applicable non-profit entity, and remain in open space and be insured as such by conditions of approval. The Action further states that the easement area shall remain natural and undeveloped except for the following:

- a. Pedestrian/equestrian trails, benches and scenic lookout points
- b. Small scattered areas of landscaping (intent: primarily native landscaping)
- c. In general, fences shall not be allowed along property lines, fences shall only be allowed to delineate public vs. private areas and immediately surrounding the residence and its associated private yard; and
- d. Small directional/informational signs.

This Community Plan Action is included as a condition of project approval; therefore the easement is consistent with the Coastal Plan and the Summerland Community Plan. Condition number 11 of TM 14,290 states:

An open space easement reviewed and approved by P&D and County Counsel for the constrained areas (areas with greater than 20% slopes) shall be dedicated to Santa Barbara County and/or may also be dedicated to an applicable non-profit entity and shall remain in open space and be insured as such by conditions of approval. Fencing, no greater than 4 feet in height, or other P&D-approved permanent marker placed at 15-20 foot intervals, shall be used to delineate the open space easement area on lots 1, 3, 4, and 7, where the roadway or trail would not already provide this delineation. All fencing within the open space easement area shall be designed to allow free movement by wildlife. The existing chain link fence along Greenwell Avenue may remain until the restoration efforts connected with the Greenwell Avenue slope repair is complete. Appropriate signage (acceptable to the holder of easement, such as "Protected Open Space Easement") shall be required on all lots to prevent encroachment. The Coastal Development Permit (CDP) for tract improvements shall not be issued until the easement is recorded on the property title and fencing and signage is installed. **Plan Requirements and Timing:** Prior to recordation, an agreement to dedicate shall be submitted for review and approval by P&D and County Counsel. The easement shall be recorded concurrently with recordation of the tentative map. Fencing or other approved marker and signage shall be installed as part of tract improvements. CDP's for individual lots shall not be issued until completion of the above.

MONITORING: Upon approval, provisions of the easement shall be monitored annually through site inspections and/or photo documentation by P&D staff.

The Resolution of Findings to accept and approve the Grant of Open Space Easement, Attachment A, ensures the "constrained" area shall remain in undeveloped open space.

The following findings are required to accept the Open Space Easement per § 51084 of the Government Code:

No grant of an Open Space Easement shall be accepted or approved by a county or city, unless the governing body, by resolution finds:

- (a) *That the preservation of the land as open space is consistent with the general plan of the county or city; and*

(b) That the preservation of the land as open space is in the best interest of the county or city and specifically because one or more of the following reasons exist:

(1) That the land is essentially unimproved and if retained in its natural state has either scenic value to the public, or is valuable as a watershed or as a wildlife preserve, and the instrument contains appropriate covenants to that end.

(2) It is in the public interest that the land be retained as open space because such land either will add to the amenities of living in neighboring urbanized areas or will help preserve the rural character of the area in which the land is located.

(3) The public interest will otherwise be served in a manner recited in the resolution and consistent with the purposes of this Recorded Map Modification and Section 8 of Article XIII of the constitution of the State of California.

The resolution of the governing body shall establish a conclusive presumption that the conditions set forth in subdivision (a) and (b) have been satisfied.

The preservation of this significant area as open space is in the best interest of the County because it is consistent with Policy LU-S-WH-5 and Action LU-S-WH-5.1 of the Summerland Community Plan which require significant open space areas and public access to be provided on the property in order to: avoid specific environmental constraints, preserve views of the property, preserve hiking and equestrian trails, and to mitigate the potential for development impacts on the site. In its unimproved state, the easement area has scenic value and will help preserve the rural character of the locality.

Procedure:

§ 51057 of the Government Code states:

The governing body of the city or county shall not accept any grant of open-space easement until the matter has first been referred to the city or county planning department or Planning Commission. Within 30 days after receiving the proposal to accept a grant of open-space easement, the planning department or Planning Commission shall submit its report to the governing body. The governing body may extend the time for submitting such a report of an additional period not exceeding 30 days. The report shall contain a statement that the proposal is or, is not, consistent with the General Plan of the jurisdiction.

The Planning Commission and Board of Supervisors have approved the necessity for the Grant of Open Space Easement pursuant to the required condition of approval. The proposed Grant of Open Space Easement is forwarded to the Board of Supervisors as part of this Board Agenda letter (Exhibit 1 to Attachment A). Planning and Development has found the proposed Open Space Easement consistent with the County's Comprehensive Plan as discussed above.

Approximately two (2) hours every other year would be required to monitor and report on the preservation of the Open Space Easement. Using a figure of \$100.00/hour for planning staff costs, and assuming an interest rate of 5%, an endowment of \$2,000.00 provided by the applicant would generate an income of \$100.00 per year, or \$200.00 every two years. This amount would be adequate to cover the costs of the monitoring program to be implemented by P&D compliance staff.

The attached documents have been reviewed and approved by Planning & Development, Risk Management, Real Property and County Counsel.

These executed documents will record concurrently with the project Final Map, TM 14,290, which also appears on today's Administrative Agenda.

Mandates and Service Levels:

The Tract Map (14,290) was approved with conditions requiring that the applicant enter and record dedication of the development rights of the Open Space Easement area to the County or other applicable non-profit entity. The acceptance and recordation of these documents will satisfy the requirements of the conditions. The acceptances of the documents will not have an effect on County levels of service.

Fiscal and Facilities Impacts:

The County of Santa Barbara is not obligated to maintain, improve, or otherwise expend any funds in connection with the Grant of Open Space Easement. The applicant has provided P&D an endowment of \$2,000.00. Interest from this endowment would be adequate to cover the costs of the monitoring program to be implemented by P&D compliance staff. In future years, cost and revenue will be budgeted in the Permitting and Compliance Program of the Development Review South Cost Center to perform monitoring of the easement.

Special Instructions:

- Clerk of the Board to forward the executed Grant of Open Space Easement to the County Clerk Recorder with instructions to record concurrent with TM 14,290.
- Clerk of the Board shall send a copy of the Minute Order and the recorded documents to Steve Goggia, Planning and Development.
- Clerk of the Board to post a copy of the Notice of Exemption for a period of 30 days.

Concurrence: Risk Management, Real Property and County Counsel

ATTACHMENTS:

- A. Resolution of Findings including the Grant Open Space Easement
- B. Subordination Agreement
- C. Notice of CEQA Exemption

ATTACHMENT A

**BOARD RESOLUTION
With
GRANT OF OPEN SPACE EASEMENT**

RESOLUTION OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

IN THE MATTER OF ACCEPTING)
A GRANT OF OPEN SPACE) RESOLUTION NO.
EASEMENT ON A PORTION OF) CASE NO. TM 14,290
APN 005-210-001)

WITH REFERENCE TO THE FOLLOWING:

- A. Grantors are the owners and applicants for development approvals on certain real property, located in the Summerland planning area of the County of Santa Barbara, Assessor Parcel No. 005-210-001 (hereinafter the Montecito Ranch Estates residential subdivision).
- B. Grantors have applied for and obtained approval by the County of Tract Map 14,290 to subdivide the 45.118-acre site into 8 parcels.
- C. An Addendum dated December 3, 2001, prepared for the project time extension, together with the original project Addendum dated September 1, 1993, and the Program EIR, 91-EIR-7, prepared for the Summerland Community Plan, concluded that the proposed easement area constituted a valuable viewshed which should be preserved in a substantially undisturbed natural state in order to offset project's environmental impacts.
- D. Summerland Community Plan Action LU-S-WH-5.1 requires that development rights to the "Constrained" areas as shown in Figure 11 (White Hole Knoll/Trails Map; the Open Space Easement area) shall be dedicated as part of the discretionary approval process to the County of Santa Barbara and/or may also be dedicated to an applicable non-profit entity, and shall remain in open space and be insured as such by conditions of approval.
- E. As a condition of approval of TM 14,290, the granting of the Open Space Easement is required to preserve this area, reduce visual and geologic impacts and insure consistency with the Summerland Community Plan and Coastal Land Use Plan.
- F. Grantors and the County desire to protect and preserve the existing undeveloped open space by the dedication to the County of an Open Space Easement.
- G. It is now deemed in the interest of the orderly development of the County and important to the preservation of the health, safety, and general welfare of the residents of said County to approve the Grant of Open Space Easement (Exhibit 1).
- H. The Planning Commission and Board of Supervisors heard and considered the evidence regarding the consistency of the offer of the grant of easement with the County's Summerland Community Plan during consideration of the Tentative Tract Map. The Planning & Development staff has submitted a report to the Board of Supervisors on the consistency of the easement with the Coastal Land Use Plan.

I. The Board has considered Staff's recommendations and the information contained in the Board's Agenda Letter prepared for the November 5, 2002 hearing, and makes the following findings as required by Government Code Section 51084:

- 1. That the preservation of the land as open space is consistent with the General Plan of the County.
- 2. The portion of the property subject to an open space easement is essentially unimproved and if retained in its natural state has scenic value and will help preserve the rural character of the area and the Grant of Open Space Easement contains appropriate covenants to that end.

NOW, THEREFORE, IT IS HEREBY RESOLVED:

- 1. The above restrictions are true and correct;
- 2. Pursuant to the provisions of Section 51084 of the Government Code, the above-described findings are made and the Grant of Open Space Easement is approved and accepted.
- 3. Pursuant to Government Code Section 51080 et.seq., the Chair of the Board of Supervisors and the Clerk of this Board are hereby authorized and directed to sign and certify all maps, documents, and other materials in accordance with this resolution to show the above mentioned action by the Board.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ___ day of _____, 2002, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

 Gail Marshall
 Chair, Board of Supervisors

ATTEST:

Michael F. Brown
 Clerk of the Board of Supervisors

SHANE STARK
 County Counsel

By: _____
 Deputy Clerk-Recorder

By: _____
 Deputy County Counsel

ATTACHMENT B
SUBORDINATION AGREEMENT

SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT is made between _____ [name of trustor], hereafter called "Trustor" and _____ [name of beneficiary], hereafter called "Beneficiary."

WHEREAS, Trustor executed a Deed of trust, dated _____, _____, in favor of beneficiary, which was recorded on _____, _____, as Instrument No. _____ in Book _____, Page _____, Official Records of Santa Barbara County, California; and

WHEREAS, Trustor is the owner of the real property subject to the Deed of Trust, hereafter called the "Property," which is located in the County of Santa Barbara, California, and is more particularly described in Exhibit A, attached hereto and incorporated by reference herein; and

WHEREAS, Trustor has applied to the County of Santa Barbara, hereafter "County," for approval of a tentative map to divide the property and a development plan to allow construction of 30 residences and appurtenant structures; and

WHEREAS, Trustor has offered to dedicate an Open Space Easement, hereafter "Easement," to County to protect the scenic value of the northern portion of the site; and

WHEREAS, in order that the easement survive in the event of foreclosure on the Property;

NOW THEREFORE, the parties to this instrument agree as follows:

Beneficiary hereby subordinates the Deed of Trust to the Open Space Easement, which shall be recorded concurrently with this instrument in the Office of the County Recorder of Santa Barbara County, California.

Beneficiary acknowledges that it hereby intentionally waives, relinquishes, and subordinates the priority and superiority of the lien of the Deed of Trust in favor of the lien of the Easement.

This Subordination Agreement shall inure to the benefit of County, its legal representatives, successors, and assigns, and shall be binding on Beneficiary and Trustor, their respective heirs, legal representatives, successors, and assigns.

Dated: _____

BENEFICIARY

Dated: _____

TRUSTOR

WAIVER OF NONCOMPLIANCE

NOTICE IS HEREBY GIVEN, pursuant to Section 2953.4(c) of the California Civil Code, that the undersigned is the holder of the beneficial interest in the Deed of Trust dated _____, by _____, as Trustor, in which _____ is named as Beneficiary and _____ as Trustee, and recorded on _____, in Book _____, Page _____, Official Records of the County Recorder of Santa Barbara County, California; that _____ knows the existence of the Subordination Agreement between Trustor and Beneficiary dated _____ in connection with that Deed of Trust and of its terms, and that Beneficiary hereby waives the provisions of Section 2953.1, 2953.2, and 2953.3 of the Civil Code.

Dated: _____

BENEFICIARY

ATTACHMENT C
NOTICE OF CEQA EXEMPTION

ATTACHMENT C

NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Steve Goggia, Planner III, P&D Development Review Division

Based on a preliminary review of the project the following activity is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

APN: 005-210-001

Case Nos.: TM 14,290 and 02MPC-00000-00002

Location: located east of Greenwell Avenue and north of the Southern California Edison sub-station and the Summerland Cottages in Summerland

Project Title: Montecito Ranch Estates Grant of Open Space Easement

Project Description: The granting of an Open Space Easement associated with development of an 8-lot subdivision of a 45.118-acre site.

Exempt Status: (Check one)

- Ministerial
- Statutory
- Categorical Exemption
- Emergency Project
- No Possibility of Significant Effect [§15061(b, 3)]

Cite specific CEQA Guideline Section: 15317. Open Space Contracts or Easements

Department/Division Representative

Date

Acceptance Date: _____

Note: A copy of this form must be posted at P&D 6 days prior to a decision on the project. Upon project approval, this form must be filed with the County Clerk of the Board and posted by the Clerk of the Board for a period of 30 days to begin a 35-day statute of limitations on legal challenges.

distribution: Hearing Support Staff
Project file (when P&D permit is required)

Date Filed by County Clerk