



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

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

Department Name: Planning & Development  
Department No.: 053  
For Agenda Of: July 10, 2012  
Placement: Departmental  
Estimated Time: 1 hour  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Department Director: Glenn Russell, Ph.D., Director, 568-2085  
Contact Info: Alice McCurdy, Deputy Director, 568-2518  
**SUBJECT:** Salentine Appeal of the Brown Grading & Horse Arena Project, Second District

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

**Recommended Actions:**

Consider the appeal filed by John Salentine, the appellant, on the County Planning Commission's *de novo* approval of the Brown Grading & Horse Arena Project, Case No. 08LUP-00000-00830. The project site is located at 1215 Franklin Ranch Road (AP No. 077-030-013) in the Goleta Community Plan area of the Second Supervisorial District.

Your Board's action should include the following:

1. Deny the appeal, Case No. 12APL-00000-00006, thereby affirming the County Planning Commission's denial of the Salentine appeal, case number 11APL-00000-00021;
2. Make the required findings for approval of the project, including CEQA findings, as provided in Attachment 1 of this Board Letter;
3. Determine approval of the project is exempt from CEQA pursuant to CEQA Guidelines Sections 15303 and 15304, as provided in Attachment 3 of this Board Letter; and
4. Grant *de novo* approval of Case No. 07LUP-00000-00830, subject to the conditions included in Attachment 2 of this Board Letter.

**Summary Text:**

This appeal addresses a proposal by Mr. and Dr. Brown for grading to alleviate the surcharge of excess soil on the Cachuma Operation and Maintenance Board (COMB) South Coast Conduit (SCC) waterline and use that overburden soil to create a new riding arena. The project also includes the relocation and legalization of several existing agricultural accessory structures. The appellant, Mr. Salentine, is appealing the County

Planning Commission's decision to deny his prior appeal of this project, Case No. 11APL-00000-00021, and the Commission's *de novo* approval of modified Case No. 07LUP-00000-00830. The Commission's modified project eliminated the arena lights that were a part of the project originally approved by P&D on September 23, 2011. All applicable policies of the County Comprehensive Plan, including the Goleta Community Plan, and all zoning requirements of the County Land Use & Development Code (LUDC) were analyzed as part of the original P&D approval, discussed in detail within the Planning Commission staff report, dated January 20, 2012, included as Attachment 5 to this Board Letter and deliberated at the Planning Commission hearing of March 7, 2012.

Since the PC hearing, the Goleta Water District requested that the Browns revise their grading plan in the area of the round pen in order to comply with the District's specifications for a minimum of 3-feet of soil cover over their water line and that the toe of the engineered slope begin at least 10-feet from their line. The revised plan has been reviewed by P&D and can be found consistent with the plans previously approved by the PC. The revised plan sheet is shown as "3ALT of 8, plan date February 8, 2012 (Revision date 5/23/12)" and is included as Attachment 6 of this Board Letter. Specific policies and zoning requirements to which the appellant objects are further discussed within this Board Letter.

**Background:**

Following is a review of the relevant permitting on the Brown's property (APN 077-030-013):

- **99-LUS-467 / 99GR5-00000-03991:** Issued in October of 1999, this Land Use Permit/Building Permit allowed the import and stockpiling of 8,400 cubic yards of soil from County Flood Control for repair of erosion damage and construction of a new horse riding arena. The fill-material was placed over approximately a 1-acre area on the northern portion of the property, with some of the material being placed over the COMB SCC waterline. In 2007, upon investigation of a reported zoning violation, P&D discovered that the area over the SCC had been overburdened by fill beyond that which had been permitted. This additional unpermitted fill caused a health & safety problem as weight of the soil threatened the integrity of the 48-inch diameter pipeline. Once this situation was realized in 2007, the Browns, in coordination with COMB, Goleta Water and P&D, began developing plans for removal of the excess fill.
- **07LUP-00000-00830:** This Land Use Permit is intended to legalize an existing horse stall structure of approximately 630 square feet (18'x35') and an approximately 500 square foot hay barn (20'x25'), which are a part of zoning violation 07ZEV-00000-00309, as well as to permit new grading of approximately 7,000 cubic yards of cut and fill, balanced on-site to remove the overburden on the COMB SCC, and to create the new horse arena, round pen and corral area. P&D approved this permit on September 23, 2011. It was appealed by Mr. Salentine on September 30, 2011. The appeal was denied and the Land Use Permit was re-approved by the Planning Commission on March 7, 2012 after amending the project to eliminate exterior light fixtures. The Commission's *de novo* approval was appealed to the Board by Mr. Salentine on March 16, 2012.
- **11EMP-00000-00007:** P&D prepared an Emergency Permit to facilitate the timely removal of the overburden soil from overtop of the SCC waterline, which is located in the COMB easement on the Brown property, while resolution of the appealed Land Use Permit (07LUP-00000-00830 above) was being sought. Furthermore, due to the urgency of the situation, P&D allowed the removed overburden to be temporarily stockpiled in a secure, engineered manner immediately adjacent to the COMB easement in the area of the horse riding arena. P&D issued the Emergency Permit and the associated grading permit (11GRD-00000-00135) for the removal of the soil overburden within the COMB SCC easement on January 10, 2012 and the emergency work to remove the overburden was conducted.

- **12BDV-00000-00019:** A new violation case was opened on February 2, 2012 as a result of development occurring on the site that exceeded the scope of work authorized by the Emergency Permit. Essentially, the violation was for grading that was done to complete the construction of the horse riding arena as well as the relocation of the horse stables, hay barn and horse corral structure. *Note:* The Planning Commission's *de novo* approval of Land Use Permit 07LUP-00000-00830 on March 7, 2012 validated the unpermitted work cited herein and thus abated these violations. However, pursuant to LUDC section 35.102.020(F), the filing of the appeal has the effect of staying any issuance or approval of the permit until final action is taken on the appeal. The Board's *de novo* approval of this Land Use Permit would validate unpermitted work and cure all of the cited violations.

### **Appellant Issues and Staff Responses:**

The appellant, Mr. John Salentine, submitted a letter (included as Attachment 4 of this Board Letter) along with the application appealing the March 7, 2012 Planning Commission denial of case number 11APL-00000-00021, and included five specific issues as reasoning for the appeal. Staff responses are presented after each appeal issue, below:

**Appellant Issue #1:** The appellant states that the approval is inconsistent with the County Comprehensive Plan, Land Use Element – Hillside and Watershed Protection policies, the Goleta Community Plan policies on steep slopes and the County LUDC standards for Ridgeline and Hillside Development, included below.

### **County Comprehensive Plan, Land Use Element – Hillside and Watershed Protection**

*Policy 1: Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.*

*Policy 2: All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.*

*Policy 6: Provisions shall be made to conduct surface water to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development. Water runoff shall be retained onsite whenever possible to facilitate groundwater recharge.*

### **Goleta Community Plan**

*GEO-GV-5: Ground disturbances and development on slopes of 20 percent or greater should be avoided, unless such avoidance would prohibit development, wherein the portion of the site which exhibits the least amount of slope shall be utilized. Development on these sites should be designed to minimize combined grading from driveway and building pad creation.*

### **County LUDC**

*Section 35.62.040.C.1.b[6]: Grading shall be minimized, in compliance with the Comprehensive Plan within Existing Developed Rural Neighborhoods.*

**Staff Response to Issue #1:**

As discussed in Section 6.3 of the Planning Commission staff report, dated January 20, 2012 (included as Attachment 5 to this Board Letter, dated July 10, 2012), the current the project is designed and conditioned to be consistent with all applicable policies of the County Comprehensive Plan, including the Goleta Community Plan.

**RE: Comprehensive Plan Policies 1, 2 & 6:** Removal of the overburden and placement of the soil immediately adjacent to the area of the previously permitted 1999 horse arena and outside of the COMB easement was determined to be both appropriate and necessary to resolve significant health and safety hazards to the South Coast service population of the SCC. Furthermore, the vast majority of soil being removed from over-top the SCC waterline and relocated outside of COMB's easement had been previously permitted for import in 1999 as part of 99-LUS-467, which authorized 8,400 cubic yards to be brought to the site and placed in this area. This earlier soil import had previously altered the natural terrain of this area of the lot by creating a large flat area, including a new horse riding arena, in what was at that time a gully with significant erosion damage. The proposed project was designed to protect the South Coast Conduit by removing what COMB had determined to be an unsafe depth of soil that had been placed over-top of their waterline. As designed and conditioned, the project would fit the existing terrain of the site, preserve natural features and vegetation, while also providing adequate drainage and erosion control.

The Emergency Permit authorized the immediate removal of 4,000 cubic yards of overburden. The *de novo* approval by the Planning Commission authorized an additional 1,250 cubic yards of cut to create the areas for the riding arena and the relocated stalls. The additional cut would situate the new arena into the hillside in an engineered manner that was acceptable to COMB for the continued protection of the SCC. Furthermore, by planting ten additional oak trees in the buffer area between the new development and the mapped ESH area of the creek, the adjacent oak tree canopy of the Franklin Creek corridor would be enhanced.

**RE: Goleta Community Plan Policy GEO-GV-5:** Policies within the Goleta Community Plan (GCP) specific to geology, topography and soils are designed to reduce hazards for new development by reducing potential geologic and soils impacts. Although application of this policy is primarily related to the development of building pads for new residential structures (e.g., single-family dwellings, guesthouses, second units, etc.), P&D also evaluates other types of projects, such as the current project, as they relate to grading and development on lots with slopes in excess of 20%. In this case, the Division of Building & Safety required that the development be engineered with subsurface "benching" to ensure proper compaction and slope stability so as to reduce any potential geologic or soil hazards, as well as to ensure continued protection from vertical and horizontal forces on the SCC waterline below the slope.

**RE: County LUDC 35.62.040.C.1.b requirement:** This section of the zoning code specifically applies to structures whose building footprint is located in a steeply sloped area and would therefore be subject to design review by the Board of Architectural Review (BAR). Grading to create a flat pad for a riding arena is neither a structure (as defined by the LUDC) nor is it development subject to review by the BAR. As such, this zoning standard does not apply to this project and is therefore cited within this appeal out of its intended context. Additionally, the relocated horse stalls and hay barn structures do not trigger design review as they are not located on a true ridgeline or hillside.

**Appellant Issue #2:** The appellant states that the Planning Commission's decision that the project is exempt from environmental review is "seriously flawed" and "not supported by the facts". The appellant also states that the Commission's approval failed to provide mitigations for anticipated impacts on the adjacent Environmentally Sensitive Habitat of Franklin Creek and failed to meet Goleta Community Plan Policies BIO-V-1 and BIO-V-2, listed below:

**BIO-V-1:** *The County shall designate and provide protection to important or sensitive environmental resources and habitats in the Goleta Planning Area.*

**BIO-V-2:** *Environmentally Sensitive Habitat (ESH) areas and Riparian Corridors within the Goleta Planning Area shall be protected and, where feasible and appropriate, enhanced.*

**Staff Response to Issue #2:** The Brown project is exempt from environmental review based upon Sections 15303 [New Construction or Conversion of Small Structures] and 15304 [Minor Alterations to Land] of the California Environmental Quality Act (CEQA) Guidelines.

Section 15303 exempts the construction of accessory (appurtenant) structures including but not limited to garages, carports, patios, swimming pools and fences. The current project proposes to legalize two existing agricultural accessory structures (a 500 sq. ft. hay barn and a 630 sq. ft. horse stall). These portions of the proposed project would fall within the limits of this exemption. Section 15304 exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry or agricultural purposes. The current project would legalize the removal of excess soil overburden located within the COMB easement for the SCC waterline, relocation of that excavated soil to a structurally engineered area immediately adjacent to the easement, relocation of an existing horse riding arena to that engineered area, and construction of a new round pen and corral area. Additionally, no healthy, mature or scenic trees would be removed as a part of this project as most of the work associated with this project is within and/or overlapping the area of previously permitted development associated with 99-LUS-467. Therefore, the proposed development would fall within the scope of this exemption.

All mapped environmentally sensitive habitat (ESH) areas are located entirely off of the subject lot and project area. Furthermore, Franklin Creek supports little riparian vegetation in this area and is separated from the project area on the Brown's property by an existing roadway. For this reason, the buffer for the ESH area was reduced to the edge of the existing riparian canopy. In an effort to enhance the vegetative buffer between the horses and the existing oaks located off-site in the creek area, ten additional 1-gallon container oaks would be planted in the area south of the roadway and would enhance the oak tree canopy and corridor.

The project on appeal provides protection to important sensitive resources and habitats (i.e., oak trees, Franklin Creek, night sky) by controlling drainage and erosion, planting additional oaks to enhance the ESH, and restricting hours of construction, outdoor lighting and the generation of dust. The implementation of storm water BMPs and an animal waste management plan (see Condition #4) would also allow further protection of the creek from possible contaminants that could adversely affect it. The drainage plans on appeal also include retention basins which allow suspended sediments to settle before being channeled to the creek. Additionally, the composting manure area would be located on the southern side of the property and over 600 feet from the nearest mapped ESH area. As conditioned and previously approved, the project was found to comply with all applicable development policies and was determined to be Categorical Exempt from CEQA, pursuant to Sections 15303 and 15304.

**Appellant Issue #3:** The appellant states that the Planning Commission failed to enforce compliance with County ordinances by not requiring correction of existing violations.

**Staff Response to Issue #3:** In response to legitimate complaints, P&D opens violation cases for unpermitted development in order to prompt property owner(s) to obtain the necessary and required permits to abate reported violations. With respect to this case, the County opened a zoning violation (case no. 07ZEV-00000-00309) for unpermitted grading and the construction of two accessory structures that required permits within the Inland area of the County. Subsequently, the Browns submitted an application for a Land Use Permit to legalize all the unpermitted development on the site. In the instant case, approval of 07LUP-00000-00830, as amended, would abate the violation and the process would be complete. Therefore, as conditioned, the approved project would be in full compliance with all applicable ordinance requirements and would correct each of the cited violations on the lot.

**Appellant Issue #4:** The appellant asserts that several Planning Commissioners either “ignored or misunderstood critical facts” in the case and as a result, the *de novo* approval of the project was in error.

**Staff Response to Issue #4:** While the appellant generally refers to “statements made by members of the Planning Commission”, he fails to cite any specific statements made during deliberation. As evidenced by their attention, questions, and deliberations, the Planning Commissioners demonstrated that they acted appropriately and within the range of their discretion with regard to this project. The evidence presented to the Commission, including the staff report, presentations, and testimony at the hearing provides a clear basis for the Commission’s decision to deny the appeal and grant *de novo* approval of the Land Use Permit for the development on the site. Furthermore, pursuant to LUDC section 35.102.050.C, the appeal of the Commission’s decision to the Board is *de novo* as well.

**Appellant Issue #5:** The appellant states that the Planning Commission’s decision was made under highly irregular procedures. Furthermore, the appellant asserts that the “improper and manipulative procedure” invalidates the Commission’s *de novo* approval of the Land Use Permit.

**Staff Response to Issue #5:** The Planning Commission’s final decision to grant *de novo* approval of the Brown project was not irregular, improper or manipulative as the appellant asserts. Furthermore, the action of the Commission was consistent with the Santa Barbara County Planning Commission Procedures Manual, section V.B.11, which states:

*“The Commissioner of the district in which the project is located is given the first opportunity to make a motion to approve, conditionally approve, deny or continue the item for additional study. Any motion for final action must include the adoption of all required findings. A majority of the Commissioners present must support a motion for any motion to pass. In the event of a split vote, (2-2), the motion would fail to pass. Unless the Commission makes another motion resulting in a majority decision, the motion’s failure to pass would be deemed a denial. For Comprehensive Plan Amendments, a recommendation for approval shall be made by the affirmative vote of not less than a majority of the total membership of the Commission.”*

In this case, before the first vote was taken, Commissioner Valencia requested of the Chair the opportunity to ask the project applicant a question for clarification, but was not granted the floor to ask this question. Subsequently, a motion to grant *de novo* approval of the project was put forward by Commissioner Brown, seconded by Commissioner Blough and voted upon. The motion failed by a 2-3 vote. After the vote,

Commissioner Blough voiced concern that Commissioner Valencia may have voted to deny the project based upon his inability to ask a clarifying question of the project applicant. The Chair inquired if there was any objection to allowing Commissioner Valencia the opportunity to ask the applicant the question, as long as the appellant was also afforded the opportunity to respond in rebuttal. No Commissioner objected. Commissioner Valencia was then able to ask his question and both the project applicant and the appellant were given time to speak. Afterwards, a second motion to grant *de novo* approval of the project was put on the table for consideration by Commissioner Brown, seconded by Commissioner Blough, and was passed by a 3-2 vote. Finally, the Board has *de novo* review over the appeal and the subject permit (per LUDC section 35.102.050.C.).

**Conclusion:**

The project currently before the Board on appeal was originally reviewed and approved by the Planning Department on September 23, 2011. At the March 7, 2012 hearing, the Planning Commission denied Mr. Salentine's appeal of P&D's approval and granted *de novo* approval to a revised project. The PC approval was subject to elimination of arena lighting and subsequent review and approval of grading plans by Building & Safety. Based on all the evidence in the record, the project (as revised and conditioned) can be found compliant with all applicable development requirements of the County LUDC and all policies within the County Comprehensive Plan, including the Goleta Community Plan.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

**Fiscal Analysis:**

The costs for processing appeals are typically provided through a fixed appeal fee and funds in P&D's adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$643.00. P&D will absorb the costs beyond that fee, estimated at approximately \$4,500.00. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-314 of the adopted 2011-2012 fiscal year budget.

**Special Instructions:**

The Clerk of the Board shall publish a legal notice at least ten days prior to the hearing on July 10, 2012. The notice shall appear in the Santa Barbara Daily Sound. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the mailed notice were attached to the set hearing Board Letter. A Minute Order of the hearing and copy of the notice and proof of publication shall be returned to P&D, Attention: David Villalobos, Hearing Support.

Hearing Support and Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors final action.

**Attachments:**

1. Findings for Approval
2. Land Use Permit, 07LUP-00000-00830 (w/ Planning Commission Conditions of Approval)
3. Environmental Document: Notice of Exemption
4. Appellant Letter: Summary of Grounds for Appeal, included in Appeal application, dated March 16, 2012
5. Planning Commission's Staff Report, dated January 20, 2012
6. Reduced Revised Grading Plan

**Prepared by:**

J. Ritterbeck, Planner II (805) 568-3509

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