



COUNTY OF SANTA BARBARA

Planning and Development

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HEARING SUPPORT

PLANNING & DEVELOPMENT

1007 81-135

SEP 13 2007

PLANNING & DEVELOPMENT

HEARING SUPPORT

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COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

2007 SEP -4 AM 11:16

Appeal to the Board of Supervisors or Planning Commission (County of Montecito)

APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of :

- All Discretionary projects heard by one of the Planning Commissions
- Board of Architectural Review decisions
- Coastal Development Permit decisions
- Land Use Permit decisions
- Planning & Development Director's decisions
- Zoning Administrator's decisions

THIS PACKAGE CONTAINS _____

- ✓ APPLICATION FORM
- ✓ SUBMITTAL REQUIREMENTS

AND, IF ✓'D, ALSO CONTAINS _____

South County Office 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	Energy Division 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2040 Fax: (805) 568-2522	North County Office 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258	Clerk of the Board 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax: (805) 568-2249
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Website: www.sbcountyplanning.org

SUBMITTAL REQUIREMENTS

- _____ 8 Copies of the attached application.
- _____ 8 Copies of a written explanation of the appeal including:
- If you are not the applicant, an explanation of how you are an “**aggrieved party**” (“Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.”);
 - A clear, complete and concise statement of the **reasons or grounds for appeal**:
 - Why the decision or determination is consistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; or
 - There was error or abuse of discretion;
 - The decision is not supported by the evidence presented for consideration;
 - There was a lack of a fair and impartial hearing; or
 - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- _____ 1 Check payable to Planning & Development.

✓
✓ Note: There are additional requirements for certain appeals including:

- a. Appeals regarding a previously approved discretionary permit**– If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).
- b. Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).



PLANNING & DEVELOPMENT
PERMIT APPLICATION

SITE ADDRESS: 2531 Grand Avenue, Los Olivos
 ASSESSOR PARCEL NUMBER: former APN 135-240-001 / Now 135-240-079 and 080 (partial)
 SIZE (acres/sq.ft.): Gross 12.76 Net _____
 COMPREHENSIVE/COASTAL PLAN DESIGNATION: 1000s ZONING: 1-E-1 ECN
 Are there previous permits/applications? no yes numbers: _____
 (include permit# & lot # if tract)
 Are there previous environmental (CEQA) documents? no yes numbers: _____

1. **Appellant:** _____ Phone: _____ FAX: _____
 Mailing Address: _____ E-mail: _____
Street City State Zip

2. **Aggrieved Party:** Santa Ynez Band of Chumash Indians Phone: (805) 688-7997 FAX: (805) 686-9578
 Mailing Address: P.O. Box 517, Santa Ynez, CA 93460 E-mail: scohen@santaynezchumash.org
State Zip

3. **Owner:** _____ Phone: _____ FAX: _____
 Mailing Address: _____ E-mail: _____
Street City State Zip

4. **Agent:** _____ Phone: _____ FAX: _____
 Mailing Address: _____ E-mail: _____
Street City State Zip

5. **Attorney:** _____ Phone: _____ FAX: _____
 Mailing Address: _____ E-mail _____
Street City State Zip

COUNTY USE ONLY

Case Number: _____ Companion Case Number: _____
 Supervisorial District: _____ Submittal Date: _____
 Applicable Zoning Ordinance: _____ Receipt Number: _____
 Project Planner: _____ Accepted for Processing _____
 Zoning Designation: _____ Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE :

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Herthel-Montanaro Lot Line Adjustment

Case No. 5LLA-0000-00015/APN 135-240-001/06NGD-0000-00029 7APL - 00000-0001

Date of Action August 22, 2007 Hearing of Planning Commission

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board?

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission?

Planning & Development Director decision

Zoning Administrator decision dated March 28, 2007

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

The Santa Ynez Band of Chumash Indians (“Tribe”) is the only federally recognized tribe of Chumash Indians in the Santa Ynez Valley and this a dispute over the protection of archeological and cultural resources that are of significance to the Tribe and Chumash people. The Tribe initially intervened by letter on September 25, 2006 and has participated in every hearing thereafter.

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
 - Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
1. A known Chumash Cemetery, SBA-188, is known to exist in the vicinity of the Montanaro Farm which was not disclosed in the initial application for the Lot Line Adjustment ("LLA").
 2. Even if the Cemetery is not onsite, existence of a cemetery means it is highly likely that a Chumash Village exists on or in the vicinity of the Montanaro Farm and the ZA found that it is probable there are artifacts on the site.
 3. Larry Spanne, former Archeologist for 23 years at Vandenberg Air Force Base, and retired after 38 years total experience, personally worked on transferring map and record information in 1968 to the UCSB Information Center for SBA-188 and recommends enhanced Phase I Survey with test pits.
 4. Prof. Glassow, a UCSB Professor who volunteers in the community to review archeologically significant projects, agrees with Mr. Spanne and RECOMMENDS ENHANCED TEST PITS AS EARLY IN THE PROCESS AS POSSIBLE. This is consistent with settled CEQA jurisprudence. *Robert T. SUNDSTROM, Plaintiff and Appellant, v. COUNTY OF MENDOCINO et al., Defendants and Respondents. Harold K. MILLER, Real Party in Interest*, 202 Cal.App.3d 296, No. A038922, Court of Appeal, First District, Division 1, California (June 22, 1988). Therefore, two qualified and well respected experts concur that the mitigation measures imposed are not sufficient to mitigate the impact on cultural resources to a level of insignificance.

5. There are two lot line adjustments for the Montanaro Farm: 5LLA-16 severs four (4) lots for 3-4 acre residential ranchettes. Previously, Mr. Herthel publicly represented that NO RESIDENTIAL development would occur ANYWHERE (www.silcom.com/~ranchlnd/notebook/41Los%20Olivos%20Park%20Fund%20Drive.htm). In addition, the 4 new lots in 5LLA-16 should be combined with the 3 lots in 5LLA-15 for determining whether the total number of parcels is in violation of the Subdivision Map Act.
6. 5LLA-15 isolates the historic Montanaro House on one lot so that the Store and Neighborhood commercial zoned lot can be developed. The commercial property will be given a new road easement to develop. The LLA also establishes new building envelopes with new required setbacks which should not be established until you know where the artifacts are.
7. The Planner's Report dated March 15, 2007, Sec. 4.2, page 2, admits inquiries have already begun to modify the Historic Montanaro House.
8. There is no post-LLA enforcement. The Herthels have engaged A. Barry Cappello, Esq. who admits in his letter dated March 19, 2007, that there is no map recordation with an LLA only deed recordation. All four (4) 5LLA-16 lots are all to be sold to total strangers whom we cannot control. The farm house will go back to the Montanaro Family whom we cannot control and are already making inquiries at the Planning Desk (see No. 6 above).
9. As the Zoning Administrator found that there is a substantial probability that the Montanaro Farm contains cultural materials, Section 15064(g) of the CEQA Guidelines provides that "*[a]fter application of the principles set forth 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".

10. In addition to the Phase I survey with test pits, there still remains no monitoring plan for sites and objects of cultural significance during any excavation and any future construction. Native American Monitors must be required during any excavation and any future construction. CEQA Guidelines Subsection 15126.4(b)(3)(C) also provides as follows: "**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. Such studies shall be deposited with the California Historical Resources Regional Information Center.**" (Emphasis added.) The County is making the tractor the finder of artifacts with no training, no experience and when they are unable to see the ground below the tractor.
11. Failure to consider cumulative impacts: 5LLA-15 ~~should be combined with the 4 residential ranchettes created in 5LLA-16,~~ including, without limitation, that the 4 new lots may be closer to the Chumash Cemetery and more at risk, the renovations of the historical Montanaro structures which have never been previously addressed and the development of the upsized neighborhood commercially zoned lot and access road.
12. The Santa Ynez Band of Chumash Indians also incorporates by this reference the entire file in this matter and 5LLA-0000-0016 whether or not such materials were filed by the Tribe, its agents or any other person or business or governmental entity, including, without limitation the documents listed in Exhibit A attached hereto.

Specific conditions imposed which I wish to appeal are (if applicable):

- a. Failure to require an Environmental Impact Report (EIR).
- b. To the extent a mitigated negative declaration is approved, Sec. 4.5 Cultural Resources, mitigation 2 &3, all Phase I extended archeological studies shall include controlled backhoe lifts which shall be completed subject to P&D approval (with a copy to the Santa Ynez Band of Chumash Indians) prior to any approval of the lot line adjustment (not prior to land use permit).
- c. To the extent a mitigated negative declaration is approved, Section 4.5, Cultural Resources, all Phase I 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 archeologist if required by P&D.
- d. To the extent a mitigated negative declaration is approved, Section 4.5 Cultural Resources, a detailed plan for cultural resource monitoring during excavation and construction shall be made part of any mitigated negative declaration and not deferred until after approval of any lot line adjustment.

e. _____

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.


I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Print name and sign – Firm

Sam Cohen - 

Date

Print name and sign - Preparer of this form

Vincent Armenta, Tribal Chair 

Date

8-29-07

Print name and sign - Applicant

Date

Print name and sign - Agent

Date

Print name and sign - Landowner

Date