



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 7, 2009  
Placement: Departmental  
Estimated Tme: 1.5 Hours  
(Staff Presentation: 10  
minutes)  
Continued Item: Yes  
If Yes, date from: 5/12/09  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Department John Baker, P&D Director, 568-2085  
Director(s)  
Contact Info: Zoraida Abresch, P&D Deputy Director, 934-6585  
**SUBJECT: High Meadow HOA Appeal of Planning Commission Approval of  
Old Mill Tract Road Land Use Permit.**

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**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** N/A

As to form: No

**Recommended Actions:**

That the Board of Supervisors:

- a) Adopt the required findings for the project, including CEQA findings, specified in the Planning Commission action letter dated January 27, 2009 (Attachment 1);
- b) Adopt the Section 15164 Addendum to the City of Solvang Environmental Impact Report for the Old Mill Vesting Tentative Tract Map (SCH #2005081109) (Attachment 2) as complete and adequate pursuant to the requirements of the California Environmental Quality Act (CEQA), including Section 15231 (Adequacy of EIR or ND for Use by Responsible Agencies) and adopt the mitigation monitoring program contained in the conditions of approval.
- c) Deny the appeal, case no. 09APL-00000-00003, thereby upholding the Planning Commission's approval of 08LUP-00000-00143 (Attachment 3); and
- d) Grant *de novo* approval of case no. 08LUP-00000-00143, subject to the conditions specified in the Planning Commission action letter and attachments dated January 27, 2009.

**Auditor-Controller Concurrence**

As to form: N/A

**A. Summary Text:**

**1. Project Description:**

The proposed project would provide for grading and an access road (within an easement located on private property within the unincorporated area) to seven of the lots created through an eight lot subdivision of property located within the City of Solvang (See Attachment 4 for two aerial photographs (a long-range and close-up view) depicting the City/County boundary line and parcel lines). Water and sewer lines would be extended to the subdivision within the access road easement. Grading for the proposed project would require approximately 1,250 cubic yards of cut, 700 cubic yards of fill, and 550 cubic yards of export offsite. The proposed access road would be located on an approximately 38-acre parcel, zoned AG-II-40 and shown as Assessor's Parcel Number 139-250-036, located at southern terminus of High Meadow Road in the Solvang area, Third Supervisorial District.

**2. Facilitation:**

The appellants, High Meadows Homeowners' Association, declined to participate in a County facilitation on the basis that their concerns with the project were not amenable to resolution through facilitation and that they had already met several times with the applicant earlier in the process and had not been able to resolve their concerns through such meetings. They consequently felt that facilitation would not be productive (source: County Counsel Memorandum, dated March 26, 2009).

**3. Planning Commission Hearing:**

At the Planning Commission (P/C) hearing of January 21, 2009, the Commission voted 4 -1 (Brooks no) to deny the appeal and grant *de novo* approval of the subject Land Use Permit (LUP) (Attachment 3). The following Condition of Approval was added to the LUP at the hearing:

1. Prior to LUP Issuance, a traffic control plan, including flag-person controls, shall be reviewed and approved by Caltrans and County Public Works. There shall be adequate traffic controls and flag-persons for the safe transit of construction truck traffic over the Highway 246/High Meadow Road intersection during soil importation for grading fill activities.

During the hearing of the item, a break was taken, during which the Planning Commissioners were provided with the EIR. When the hearing was resumed, the Commission made the requisite finding that the CEQA Section 15164 Addendum to the City of Solvang EIR was adequate to fulfill the environmental review requirements of the subject LUP.

In addition to the appellants and the applicant, testimony was provided by Mr. Tully Clifford, Public Works Director for the City of Solvang, and Mr. Jerry Jackman, Executive Director of the Santa Barbara Trust for Historic Preservation.

**4. CEQA Review:**

By approving the LUP, the Planning Commission has determined that the prior environmental document, including the addendum (Attachment B) may be used to fulfill the environmental review requirements of the current project under CEQA Guidelines Section 15164 (Please note that the

Findings attached to the Commission Action letter do not contain the CEQA Findings which were part of their action. This error has been corrected in the Findings attached to this letter).

CEQA Section 15231, Adequacy of EIR or Negative Declaration for Use by Responsible Agencies states that "A final EIR prepared by a Lead Agency or a Negative Declaration adopted by a Lead Agency shall be conclusively presumed to comply with CEQA for purposes of use by Responsible Agencies which were consulted pursuant to sections 15072 or 15082 unless one or more of the following conditions occurs: (a) The EIR or Negative Declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or (b) A subsequent EIR is made necessary by Section 15162 of these Guidelines.

On October 23, 2006, the Solvang City Council approved the eight lot subdivision and certified the EIR (Resolution Number 06-764 / SCH 2005081109). The subject LUP for the access road has been addressed in a Section 15164 Addendum to the Solvang EIR, dated October 15, 2008. The entire CEQA document, including the EIR and 15164 letter, are available for review by Board members and interested parties at the office of the Clerk of the Board, 105 E. Anapamu St., Suite 407, Santa Barbara.

### **B. Appellant Issues and Staff Response:**

The appellants, High Meadow Homeowners Association (represented by Mike Stinson and Pat Sullivan), submitted a letter, dated January 29, 2009 (included as Attachment E of the previously submitted Board Set Hearing letter) along with the application appealing the 2008 County Planning Commission's approval, identifying the following items as the bases for appeal:

**1. Issue:** The Planning Commission had incomplete knowledge of the Solvang EIR prior to the Commission appeal hearing.

**Response:** The Planning Commission considered the County-prepared Addendum (pursuant to CEQA Section 15164) to the City of Solvang EIR and voted 4-1 for *de novo* approval of the LUP. There was a break in the January 21, 2009 hearing of the item which allowed the EIR to be provided to the members of the Commission.

**2. Issue:** The proposed project has growth-inducing impacts which would adversely affect County residents reliant on the existing access road.

**Response:** The proposed access road, which would provide access to seven undeveloped lots within the Solvang City limits, terminates in a cul-de-sac approximately 50 feet north of the southern boundary of the project site. Adjacent property is owned by the Santa Barbara Trust for Historic Preservation and California State Parks. The proposed road, as well as water and sewer service would be extended to the development within an existing easement. City of Solvang EIR Mitigation Scenario 3 – Elimination of Project Access from High Meadow Road is discussed in the Traffic and Transportation section, and as a Project Alternative. In order to minimize potentially significant growth-inducing effects of the subdivision project, the EIR required a five foot "denied-access" easement in favor of the City at the southern and eastern property boundaries. While the development of the proposed access road for use by approximately 20-25 persons (seven lots x approximately 3-4 persons per residence) would increase traffic on the existing private road and thereby adversely affect County residents, this impact was determined to be less than significant.

**3. Issue:** Easements granted to the Santa Barbara Trust for Historic Preservation and the California State Parks have not been analyzed in the EIR.

**Response:** The proposed project which is the subject of this appeal is for grading of an access road serving seven lots of an eight lot subdivision approved by the City of Solvang, which certified the EIR as part of the approval process. As a Responsible Agency, the County's jurisdiction is limited to review of the requisite LUP for grading of the access road. Disagreement between the applicant and appellants regarding the full extent of rights conveyed by the easement are civil in nature and need not be disclosed in order to obtain approval of an access road located within the depicted easement.

The Growth-Inducing Effects Section of the EIR discusses the 38 acre parcel purchased by the Trust with the primary purpose of protecting and preserving the old grist mill that was part of Mission Santa Ines. While noting that negotiations regarding conveyance to the State for development as a State Historical Park have taken place, it is acknowledged that the property could be conveyed to another entity if it were determined to be beneficial to the primary goal of preserving the old grist mill. Development of a State Park on the "Trust" would require approval through a separate discretionary application process which would include full public disclosure and participation.

**4. Issue:** The proposed subdivision is located on property that is located in a floodway and a floodplain and should not have been rezoned from an agricultural to a residential designation.

**Response:** Approval of the subdivision is outside of the County's jurisdiction as a Responsible Agency. With the exception of the bulb of the cul-de-sac (an approximately 3,600 sq.ft. area), the proposed access road which is the subject of this appeal is located outside of the Alamo Pintado Creek floodplain. While the subdivided property (on land zoned 20-R-1 by the City of Solvang) is located almost entirely within the floodplain, no structural development is proposed to be located within the floodway.

**5. Issue:** The proposed access road would be used for both agricultural and residential purposes and would not provide a buffer zone between agricultural and residential uses, representing a significant, irreversible environmental change.

**Response:** The proposed access road, located on agriculturally zoned land (AG-II-40) within the unincorporated area of the County, would separate the agricultural field to the east (currently planted in olive trees) from the subdivision to the west. In comments submitted on the draft EIR, the former County Agricultural Land Use Planner acknowledged that the impacts from the loss of productive agricultural lands surrounding the subdivision project site were identified during the City's General Plan proceedings and addressed in a Statement of Over-Riding Considerations adopted as part of the General Plan approval (Lisa Bodrogi Memorandum, dated April 19, 2006).

**6. Issue:** Traffic analysis is flawed, particularly with regard to the State Highway 246/High Meadow Road intersection. The County's Guidelines for Preparation of Traffic Studies should be applied to the proposed project.

**Response:** The proposed access road project includes a CEQA Section 15164 Addendum to the City of Solvang EIR, which incorporates Caltrans letter, dated August 20, 2008, stating that occupancy of proposed residential structures should be prohibited unless certain improvements are made at the intersection of State Route 246 and High Meadow Road. At the P/C hearing, Mr. Tully

Clifford, Public Works Director for the City of Solvang testified that the City intends to make the required improvements. A study of the intersection, and required improvements, including funding and timing, is currently underway.

According to the EIR, the City of Solvang uses the County of Santa Barbara standards for evaluating the level of significance of project impacts. The Traffic and Transportation section of the EIR, prepared by Orosz Engineering Group, includes an analysis of the SR 246/Alamo Pintado intersection.

**7. Issue:** The applicant's claim that construction of a bridge over Alamo Pintado Creek would not be permitted by County Flood Control or State Department of Fish & Game and would be too expensive is unsubstantiated. A bicycle bridge could be constructed within the existing easement.

**Response:** Approval of the subdivision, and imposition of conditions of approval unrelated to the access road, is outside of the County's jurisdiction as a Responsible Agency. The proposed project involves a Land Use Permit for the construction of an access road within the unincorporated area of the County. The proposed road would be located within an existing easement from the southern terminus of High Meadow Road, a privately maintained road. While an alternative access route avoiding High Meadow Road would greatly reduce adverse impacts of the subdivision on High Meadow Road residents, the subject LUP application includes no provision for construction of a bridge over Alamo Pintado Creek, nor does it require review of an alternative access requiring a new bridge.

**8. Issue:** Testimony before the Planning Commission indicates that the "Trust" property has been purchased for use as a State Park which would be accessed via a bridge across Alamo Pintado Creek. This statement is inconsistent with the applicant's claim that a bridge cannot be constructed in this location.

**Response:** See response to Item 7 above.

**9. Issue:** The use of a private easement located in the unincorporated area of Santa Barbara County for the use of homeowners depending on that easement has not been adequately considered.

**Response:** See response to Item 3 above. Note that many private road easement matters are civil in nature and the County typically does not get involved with civil matters.

**10. Issue:** The proposed access road does not meet State road standards, has no signage, is unpatrolled and will be utilized for a substantial amount of construction activity. Liability issues need to be addressed.

**Response:** The proposed access road would be located at the southern terminus of High Meadow Road, a private road. The road would be 22 inches in width and 1,300 feet in length. The volume of construction traffic estimated in the City of Solvang EIR, approximately 25-30 heavy trucks per day, could be accommodated by the proposed access road. The Commission's *de novo* approval of the LUP included the addition of a Condition of Approval requiring a Traffic Control Plan (See Traffic Control Plan Condition of Approval on the subject Land Use Permit (Attachment 3) and noted in Section A.3 above).

State road standards would not apply to a private road. The liability responsibility is assumed by the HOA as part of its long-term maintenance obligations. Any liability resulting from design flaws would be assigned to the design engineer. No State or County standards for signage apply to a private road. The project engineer *should* design the private road in accordance with the national standard (Manual of Uniform Traffic Control Devices). Law enforcement patrol activity would be determined by the County Sheriff and the City of Solvang.

**11. Appellant's Conclusion:** Project approval is not good government, and would: cause irreparable harm to County residents by: 1) endangering citizen's lives on SR 246 and High Meadow Road; 2) lowering property values; and 3) increasing County liability to lawsuits from accidental death to flood damage.

**Response:** The County has applied the standards contained in the Board of Supervisors-adopted General Plan, Land Use Development Code, and Grading Ordinance in approving the LUP for the access road and the necessary findings can be made. Approval of the subdivision is the responsibility of the City of Solvang as the Lead Agency. As a Responsible Agency, the County's jurisdiction is limited to approval of the subject access road LUP.

**C. Staff Conclusion:** The subdivision project approved by the City of Solvang was evaluated in an EIR which included a cursory evaluation of a project alternative access from Alamo Pintado Road, thereby avoiding the need for access from High Meadow Road. The EIR rejected this alternative as highly constrained and speculative. As designed, the proposed access road which is the subject of this appeal meets the County criteria for approval.

**D. Background:**

Please refer to the Planning Commission Staff Report included as an attachment to the May 12<sup>th</sup> Board Set Hearing letter. In particular, note the chronology on page 6.

**Performance Measure:**

N/A

**Fiscal and Facilities Impacts:**

A \$443.00 fee was filed with the appeal to the Board of Supervisors. Estimated staff time to process this appeal is approximately 15 hours or approximately \$ 2,300.00, and is budgeted in the Permitting & Compliance Program of the Development Review, North Division on Page D-305 of the adopted 2008–2009 fiscal year budget.

**Staffing Impacts:**

**Legal Positions:**

N/A

**FTEs:**

N/A

**Special Instructions:** The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on July 7, 2009. The notice shall appear in the Santa Barbara News Press and Santa Ynez

Valley Journal. The Clerk of the Board shall fulfill noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning & Development, attention David Villalobos.

**Attachments:**

1. Findings, 01/27/09
2. CEQA Section 15164 Addendum, dated 10/15/08
3. Land Use Permit, dated 01/27/09
4. Aerial Photographs (long-range and close-up) of Project Vicinity, depicting Solvang City Limit line, parcel lines, and labeled roadways (08/02/08)

**Authored by:**

John Karamitsos, Supervising Planner, 934-6255