



PLANNING & DEVELOPMENT
PERMIT APPLICATION

SITE ADDRESS: 2531 Grand Avenue, Los Olivos

ASSESSOR PARCEL NUMBER: APN 135-180-007 and 135-200-004

PARCEL SIZE (acres/sq.ft.): Gross 12.98 Net _____

COMPREHENSIVE/COASTAL PLAN DESIGNATION: Res-1.0 _____ ZONING: 1-E-1 and CN _____

Are there previous permits/applications? no yes numbers: 05LLA-00000-00016
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? no yes numbers: 07ND-00000-00039

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) 686-9575

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 (Herthel 4)

Case No. 5LLA-0000-00016/APN 135-180-007/135-200-004/07ND-0000-00039

Date of Action January 9, 2008 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 dated January 9, 2008 (SB County)

Planning & Development Director decision

Zoning Administrator

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 in the companion lot line adjustment of 05LLA-00000-00015

whereby we discovered 05LLA-00000-00016, which the Tribe protested on December 3, 2007 and have 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 measure 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. 5LLA-16 is overt subdivision for resale and the "two intervening parcels" are clearly for resale after the 5LLA-16 parcels have been sold.
7. The Planner's Report for 5LLA-15 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 for 5LLA-15, 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 contains cultural materials, and that has been incorporated in the staff report for 5LLA-16. 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. Finally, after the 4 residential ranchettes have been "stripped" from the Montanaro Farm and sold it is clearly foreseeable the two intervening lot between 5LLA-15 and 5LLA-16 will be subsequently sold.
12. The Santa Ynez Band of Chumash Indians also incorporates by this reference the entire file in this matter and 5LLA-0000-0015 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, 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, 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, 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.


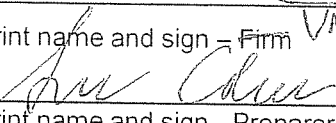
e. _____

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

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.

 Date: 01-16-08
Print name and sign - Firm Vincent Armenta, Chairman, Santa Elena Band of Mission

Print name and sign - Preparer of this form Ann Cohen, Court. Affairs and Legal Dept., S&BCD
Date 1-16-08

Print name and sign - Applicant
Date

Print name and sign - Agent
Date

Print name and sign - Landowner
Date

Santa Ynez Band of Chumash Indians

P.O. Box 517 • Santa Ynez, CA 93460
805-688-7997 • Fax 805-686-9578
www.santaynezchumash.org



BUSINESS COMMITTEE
Vincent Armenta, *Chairman*
Richard Gomez, *Vice Chairman*
Kenneth Kahn, *Secretary/Treasurer*
David D. Dominguez, *Committee Member*
Gary Pace, *Committee Member*

EXHIBIT A

Santa Barbara County Board of Supervisors
Herthel-Montanaro Lot Line Adjustment
5LLA-00000-00016 ("Herthel 4")
Documents submitted into Record by
Santa Ynez Band of Chumash Indians

September 25, 2006	SY Band of Chumash Indians Opposition Letter
December 16, 2006	Larry Spanne support letter
December 26, 2006	SY Band of Chumash Indians Opposition Letter to ND
January 17, 2007	Larry Spanne additional support letter
February 16, 2007	Dr. Michael Glassow, UCSB, support letter req ext Phase I
March 20, 2007	Dr. Michael Glassow, UCSB, support letter, test pits
March 21, 2007	SY Band of Chumash Indians Opposition letter
November 14, 2007 (not 2004)	Request to consolidate 5LLA-15 and 5LLA-16
December 3, 2007	Opposition email to 5LLA-16

Santa Ynez Band of Chumash Indians

P.O. Box 517 • Santa Ynez, CA 93460
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David D. Dominguez, *Committee Member*
Gary Pace, *Committee Member*

Planning Commission Hearing of January 9, 2007
Herthel-Montanaro Lot Line Adjustment (“Herthel 4”)
5LLA-00000-00016
Additional Documents submitted into Record by
Santa Ynez Band of Chumash Indians
January 7, 2007

Christward Ministry v. Superior Court, 184 Cal.App.3d 180, 186-87 (1986)

In determining whether an EIR is required, a comparison must be made as to the current existing physical environment and not as to future hypothetical development rights. In determining whether an EIR is required, the agency must examine whether there is substantial evidence of a fair argument of significant impacts on the “existing physical environment”—rather than some hypothetical environment that might possibly occur in the future. *Christward Ministry v. Superior Court*, 184 Cal.App.3d 180, 186-87 (1986); Sec. 21060.50. Thus, for example in *Chrisward Ministry*, *supra*, the Court rejected the argument that a general plan amendment had no significant impact because facilities could have been located by special use permit. *Id.* at 190-91. At the time of the amendment, the hypothetical facilities did not exist. *Id.* Thus, an environmental analysis of what was possible under the existing general plan and what was permitted under the amendment was “illusory.” *Id.*; see also *County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th 931, 952 (1986); *City of Carmel-by-the-Sea v. Board of Supervisors*, 183 Cal.App.3d 229, 246 (1986) (agency must consider impacts of rezoning “on the existing physical environment;” a comparison of potential development under the pre-existing land use plan with “what is possible under the rezoning bears no relation to real conditions on the ground”).

Preservation of Los Olivos (POLO) Opposition to Montanaro development in 2003:

SUBDIVISION BASED ON PROPERTY RIGHTS

There are only three legal parcels on the property. Despite the existence of lot lines on county documents denoting potential additional parcels, no rights to those parcels have been granted nor are they guaranteed. Since the property has been in the Montanaro family for over a century, it is highly unlikely that the original purchase intent was to subdivide and sell smaller parcels. If this had been the intent, steps would have been taken to subdivide the property long ago. Therefore, one main goal should be to keep some sense of the continued use of agriculture on the property. Large five-acre properties with home sites would be compatible with rural ranchette uses of the land.

POLO Website: <http://www.polosyv.org/help/POLOcreation.htm>

POLO was confronted by a strong County Planning and Development Department and Supervisor whose goal was to "fill-in urban core" with high density housing. The POLO board was told by a head S.B. County planner that the Montanaro property was scheduled for "high density development". At this point POLO realized the only option was to purchase the land and embarked on a massive fund-raising effort to buy the property. The property owners agreed to sell to our group and afterwards it was revealed that the Santa Barbara County Planning and Development Department's goal was to rezone the entire 27 acres to allow 5-7 units per acre (small Lot Plan). Los Olivoans and valley friends responded with over a quarter million dollars in donations. How many other small towns of 1000 people can match such generosity? However, this total was still far short of the multi-million dollar cost of the land. The 45-day escrow time was running out so in the eleventh hour a POLO board member rapidly refinanced and borrowed to purchase and preserve the property. This marked POLO's first success, but the next challenge was just around the 'corner'.

VPAC Minutes, October 3, 2002:

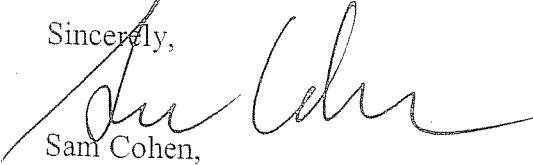
Alex Rossi – nowadays all of us are more aware and concerned about what might happen to Indian burial grounds or artifacts – that area on the Montanero properties will certainly disturb things of that nature. Don't hear anything being discussed about this.

Letter from Douglas Herthel to David Stone dated August 22, 1984:

The proposed subdivision of the George Suman property in Los Olivos appears to have some major planning problems that would create a major environmental impact on the residents of the Los Olivos Area.

May 7, 2007	Negative critique of Carbone Survey by Prof. Henrikson
Nov. 14, 2007 (not 2004)	Request to consolidate 5LLA-15 and 5LLA-16 appeals
September 25, 2006	SY Band of Chumash Indians Opposition Letter
December 16, 2006	Larry Spanne support letter
December 26, 2006	SY Band of Chumash Indians Opposition Letter to ND
January 17, 2007	Larry Spanne additional support letter
February 16, 2007	Dr. Michael Glassow, UCSB, support letter req ext Phase 1
March 20, 2007	Dr. Michael Glassow, UCSB, support letter, test pits
March 21, 2007	SY Band of Chumash Indians Opposition letter

Sincerely,


Sam Cohen,
Government Affairs and Legal Specialist



The California Environmental Quality Act

CHRISTWARD MINISTRY, Appellant,

v.

SUPERIOR COURT of the State of California for the County of San Diego,

Respondent,

CITY OF SAN MARCOS, et al., Real Parties in Interest.

184 Cal.App.3d 180

D003018.

Court of Appeal, Fourth District, Division 1, California.

Aug. 8, 1986.

Organization which owned land used as religious retreat brought petition for writ of mandate to set aside adoption of general plan amendment creating solid waste management facilities designation applied to landfill near retreat area without environmental impact report by city. The Superior Court, San Diego County, Robert J. O'Neill, J., denied petition, and organization appealed. The Court of Appeal, Staniforth, Acting P.J., held that: (1) need for environmental impact report was not negated by city's general plan and ordinances which permitted uses now authorized by amendment by use permit in all nonresidential areas; (2) need for environmental impact report for landfill was not negated by amendment's requirement of special use permit and environmental impact report before development of any new use of landfill site; and (3) organization presented substantial evidence supporting fair argument that general plan amendment would have potentially significant environmental impact.

Judgment reversed and writ of mandate issued.

Opinion, 225 Cal.Rptr. 334, vacated.

Michael M. Hogan and Gray, Cary, Ames & Frye, San Diego, for appellant.

No appearance for respondent.

Smith & Peltzer, Wesley W. Peltzer, San Marcos, Nossaman, Guthner, Knox & Elliott and John Knox, Los Angeles, as amicus curiae, for respondent.

Warren B. Diven, F. MacKenzie Brown, Rancho Santa Fe, for real parties in interest.

STANIFORTH, Acting Presiding Justice.

Christward Ministry (Christward) appeals the denial of its petition for a writ of mandate to set aside the adoption of a general plan amendment creating a solid waste management facilities designation and applying it to the San Marcos landfill without an environmental impact report (EIR) by the City of San Marcos (City).

FACTS

The City has eight separate planning areas including the 4000-acre South City planning area involved here. Christward owns 640 acres in the South City area which it uses as a religious retreat. Also within the South City area is the 202-acre San Marcos sanitary landfill. The landfill has been operated continuously since 1977 when the City approved an environmental impact report and special use permit for the landfill.

In 1984, the City's staff proposed an amendment to the general plan (GPA 02- 84) in response to legislation requiring local planning agencies to identify solid waste facility sites and to adopt guidelines for avoiding potential conflicts between solid waste facilities and surrounding land uses. The amendment proposed a solid waste management facilities plan designation for the South City area and applied the designation specifically to the San Marcos landfill. The amendment also contained guidelines for siting and approving new or expanded solid waste management facilities based on guidelines recently adopted by Fresno and Kern Counties.

The City planning department conducted an initial study of the impact of the amendment and concluded since the amendment would not create any new impacts not already adequately addressed by the 1977 environmental impact report (EIR) for the San Marcos landfill, it did not need to prepare an EIR but only a negative declaration.

In July 1984, following a public hearing attended by Christward, the City planning commission approved the amendment. Christward appealed the decision to the City council.

On August 28, 1984, the City council voted 4 to 0 to approve the amendment and adopt the negative declaration.

Christward filed a petition for a writ of mandate in superior court contending the City was required to prepare an EIR before adopting the amendment. The court denied the petition on the grounds the amendment was required by state law and did not authorize any new solid waste management use not previously authorized by the City's general plan and zoning ordinances, therefore an EIR was not required. Upon denial of its petition, Christward sought a writ of mandate in this court (D002848). We denied the petition on April 5, 1985, finding Christward's remedy of appeal was adequate. Christward thereafter filed its notice of appeal on April 15, 1985.

DISCUSSION

I

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) was enacted by the Legislature to "ensure ... long-term protection of the environment" (Pub. Resources Code, § 21001, subd. (d).) "CEQA is essentially an environmental full disclosure statute, and the EIR is the method ... [of] disclosure...." (*Rural Landowners Assn. v. City Council*, 143 Cal.App.3d 1013, 1020, 192 Cal.Rptr. 325.) An EIR functions "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment...." (Pub. Resources Code, § 21061; *Karlson v. City of Camarillo*, 100 Cal.App.3d 789, 804, 161 Cal.Rptr. 260; *Environmental Defense Fund, Inc. v. Coastside County Water Dist.*, 27 Cal.App.3d 695, 704-705, 104 Cal.Rptr. 197.) An EIR is "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return" (*County of Inyo v. Yorty*, 32 Cal.App.3d 795, 810, 108 Cal.Rptr. 377) and "to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action" (*No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 86, 118 Cal.Rptr. 34, 529 P.2d 66). An EIR is required for any project where it may be fairly argued a project will have a significant impact on the environment. (*No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d 68, 75, 118 Cal.Rptr. 34, 529 P.2d 66; Pub.Resources Code, § 21151.) If there is a possibility the project may have such an effect, the local agency must conduct an initial threshold study. (Cal.Admin.Code, tit. 14, § 15080; *Merz v. Board of Supervisors*, 147 Cal.App.3d 933, 936, 195 Cal.Rptr. 370.) If there is no substantial evidence to support a fair argument the project will have a significant effect on the environment, then the local agency is to adopt a negative declaration. (Pub. Resources Code, § 21080, subd. (c)(1); *Newberry Springs Water Assn. v. County of San Bernardino*, 150 Cal.App.3d 740, 748, 198 Cal.Rptr. 100; *Selmi, The Judicial Development of the California Environmental Quality Act (1984)* 18 U.C.Davis L.Rev. 197, 228.)

An amendment to a general plan applying a land use designation falls within the scope of CEQA and an EIR or negative declaration is required as an adjunct to approval. (*City of Santa Ana v. City of Garden Grove*, 100 Cal.App.3d 521, 534, 160 Cal.Rptr. 907; Cal.Admin.Code, tit. 14, § 15378, subd. (a)(1).) In assessing the impact of the amendment, the local agency must examine the potential impact of the amendment on the existing physical environment; a comparison between the proposed amendment and the existing general plan is insufficient. (*Environmental Planning & Information Council v. County of El Dorado*, 131 Cal.App.3d 350, 358, 182 Cal.Rptr. 317.)

Section 21168 of the Public Resources Code provides for judicial review of an agency decision under CEQA which was made after a hearing by the administrative mandamus procedure of Code of Civil Procedure section 1094.5. Judicial review focuses on whether there is any substantial evidence in light of the whole record to support the decision and whether the agency abused its discretion by a filing to proceed in the manner required by law. (*Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal.App.3d 421, 428, 222 Cal.Rptr. 247; *Dehne v. County of Santa Clara*, 115 Cal.App.3d 827, 835, 171 Cal.Rptr. 753.)

On a claim of EIR rather than a negative declaration should have been prepared, the courts look to see if there was substantial evidence to support the agency's

conclusion it could not be "fairly argued" the project would have a significant environmental impact. (*Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles*, 134 Cal.App.3d 491, 503-504, 184 Cal.Rptr. 664.) If there is no substantial evidence to support the agency's conclusion a fair argument cannot be made that the project will have a significant environmental impact, then the agency's action in adopting a negative declaration amounts to an abuse of discretion by the agency and a failure to proceed in a manner required by law. (Ibid.)

II

The general plan amendment here (GPA 02-84) states its purpose is to guide the location and designation of solid waste management facilities within the South City planning area. The amendment's objectives are stated as: (1) ensuring "proper siting of solid waste management facilities" in the area, (2) protecting "existing and future solid waste management facilities from encroachment from incompatible land uses" and (3) designating "the San Marcos Sanitary Landfill as a solid waste management facility and site on the City's General Plan Land Use Map."

The amendment contains seven policies.

"1. New solid waste management facilities shall be located in areas where environmental impacts can be minimized and are determined to be compatible with the surrounding land uses.

"2. Land use compatibility with existing and planned new uses or facilities shall be ensured through the imposition of conditions dealing with site location and development and the issuance of a use permit by the City.

"3. Adjoining land uses and zoning shall be deemed compatible by virtue of the zoning classifications and land use designations which indicated that the surrounding properties are or designated for Estate Residential and Agricultural densities and land uses as set forth in the City's and County General Plan.

"4. Solid waste management facilities shall be site designed with the following features to ensure land use compatibility with surrounding properties: provide adequate setbacks between the solid waste management operations and surrounding properties, particular emphasis on residential properties and structures shall be given, to reduce or eliminate potential noise, dust, odor and vector conditions; install and maintain a landscaped buffer around the perimeter of the solid waste operations with emphasis on planting of strategic locations between the operations and residential units as a visual screen enhancing on-site views or eliminating negative visual features of solid waste management facilities; utilize natural topographic features to strategically locate such facilities to diminish visibility and to reduce potential noise problems.

"5. Solid waste management operations shall be mitigated at the time of consideration of a use permit by the City. Such use permit consideration shall address, at a minimum, the following conditions to protect such operations and to ensure land use compatibility with surrounding properties: potential litter problems and removal programs at and around the facility operation(s); potential dust

problems in areas where fugitive dust conditions are created by operational activities; potential odor and vector problems; potential traffic problems associated with vehicles utilized by the operations or in conjunction with the existing or planned solid waste management operations; potential noise and visual problems associated with existing or planned solid waste management operations or facilities at this site.

"6. Incompatible land uses shall not be permitted within an identified impact area of existing or planned solid waste facilities and/or operations.

"7. The following land uses are deemed consistent with the solid waste management land use designation and policies: sanitary landfills, transfer stations, waste-to-energy facilities, recycling and resource recovery centers. Hazardous solid or liquid waste disposal operations shall not be allowed within this land use category."

The City's intent in adopting a GPA 02-84 is reflected in the City's Resolution 84-2005. This resolution states the amendment was necessary to comply with state law requirements about designating the general location and extent of waste disposal facilities (See Gov. Code, §§ 65302, subd. (a), 66730 et seq.) and ensuring surrounding land uses where compatible. (See, e.g., Gov. Code, § 66796.41.) Before the resolution, the City's general plan lacked such a designation and guidelines; solid waste management use was permitted on nonresidential land in the City through a special use permit.

The resolution also states the amendment's purpose was to apply a solid waste management facility land use designation to the San Marcos landfill, to establish land use policies to "guide any future development, expansion or modification of the existing San Marcos Landfill Site" and to establish standards to "govern the City's consideration of future solid waste disposal development proposals at the San Marcos Landfill Site."

III

Christward contends an EIR was required because the amendment's "effect [was] to change the land use designation of the entire Community Plan Area to permit the future siting of new and expanded types of solid waste management facilities." This assertion is not born out by the language of the amendment.

While the amendment addresses the siting of "new" or "future" solid waste management facilities in the general South City planning area, the amendment actually applies the land use designation only to the 200-acre San Marcos landfill. No other area in South City is designated as a solid waste management facility site by the amendment. Only the San Marcos landfill is given such a designation. Only the San Marcos landfill area of the City's general plan land use map is authorized to have a solid waste management facility designation by the amendment. To apply the solid waste management facility designation to any other part of the South City planning area would require another general plan amendment. To the extent Christward's claims rest on a change of land use designation on the 4000 acres of South City, there is no merit.

IV

Christward argues an EIR was required because the amendment authorized an expansion of land uses at the San Marcos landfill. It points to policy 7 of the amendment which states:

"The following land uses are deemed consistent with the solid waste management land use designation and policies: sanitary landfills, transfer stations, waste-to-energy facilities, recycling and resource recovery centers. Hazardous solid or liquid waste disposal operations shall not be allowed within this land use category." (Italics added.)

The City asserts that at the time the amendment was adopted, the City's general plan and zoning ordinances permitted these uses by a use permit in all nonresidential areas of the City and the effect of applying the solid waste management facilities designation to the San Marcos landfill was merely a ratification of an existing use which had an adequate EIR completed and adopted in 1977.

However, the amendment's definition of a solid waste management facility designation includes uses which did not exist at the landfill site at the time the amendment was adopted, e.g., transfer stations, and waste-to-energy facilities. The amendment does not, as City contends, merely ratify an existing use for which an EIR had been prepared in the past, but authorizes potential new uses at the site.

When assessing whether an EIR is required for a general plan amendment changing a land use designation, the local agency is required to compare the newly authorized land use with the actually existing conditions; comparison of potential impacts under the amendment with potential impacts under the existing general plan is insufficient. In *Environmental Planning & Information Council v. County of El Dorado*, *supra*, 131 Cal.App.3d 350, 182 Cal.Rptr. 317, the city had adopted general plan amendments reducing the residential population densities in two areas of the city. The city's EIR compared the potential population densities allowed under the existing general plan (70,400 and 63,600) with the population densities allowed under the amendment (5,800 and 22,440). The appellate court held the EIR was inadequate because it failed to examine the impact of the amendment on the actual physical environment. The court noted the comparisons were "illusory" since the actual populations of the two areas were 418 and 3,800; the amendments actually called for substantial increases in population rather than illusory decreases. (Id. at p. 358, 182 Cal.Rptr. 317.) The court concluded:

"The comparisons utilized in the EIRs can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts which would result. There are no extensive, detailed evaluations of the impacts of the proposed plans on the environment in its current state. Accordingly, the EIRs fail as informative documents." (Ibid.)

Similarly, in the instant case, the City's argument that the amendment had no significant environmental impact because under the existing general plan such facilities could have been located at the San Marcos Landfill site by a special use permit, must fail. At the time of the amendment, the hypothetically permitted

facilities did not in fact exist at the landfill. As in *Environmental Planning & Information Council v. County of El Dorado*, *supra*, 131 Cal.App.3d 350, 182 Cal.Rptr. 317, an environmental analysis based on a comparison between what was possible under the existing general plan and what was permitted under the amendment was "illusory."

Moreover, as represented by the City, under the existing general plan such facilities were not tied to any particular location, but rather were permitted, upon obtaining the necessary permit, in all but residential areas. In contrast, the effect of the amendment was to pinpoint a particular location for these facilities and apparently, to concentrate them. Thus, even if a mere comparison between the existing general plan and the amendment were sufficient, in the instant case, it was like comparing apples and oranges.

Further, the City's reliance on a comparison with the existing general plan is misplaced in light of one of the stated reasons for enacting the amendment--the need to conform to state law requiring the City to develop guidelines for siting solid waste facilities and to apply such a designation before approving such facilities.

Under the Nejedly-Z'berg-Dills Solid Waste Management and Resource Recovery Act of 1972 (Act) (Gov. Code, § 66701 et seq.) as amended in 1983, local governments are directed to develop a solid waste management plan. (Gov. Code, § 66780, subd. (a).) The plan must "identify and reserve sites for the establishment or expansion of solid waste facilities" and "ensure that land uses adjacent to or near those sites are compatible with the solid waste facilities." (Gov. Code, § 66780, subd. (b).) Public participation in the planning process is mandated, with the public to be given an opportunity "to respond to clearly defined alternative objectives, policies and actions." (Gov. Code, § 66780, subd. (c).)

The Act states a local government may reserve a site for expansion or a potential site for a solid waste facility only if the site is consistent with the general plan. (Gov. Code, § 66780.2, subd. (a).) This requirement is met if the local government has adopted a valid general plan, a solid waste management plan, the site expansion or potential site is so designated on the general plan and the adjacent land uses are compatible with the solid waste facility. (Gov. Code, § 66780.2, subd. (b).)

The Act further provides, until a solid waste management plan is adopted, no new facilities can be established unless there is a need for "immediate implementation." (Gov. Code, § 66783.1.) Once a solid waste management plan is adopted, a new solid waste transfer station or disposal site may not be approved unless consistent with the solid waste management plan (Gov. Code, § 66784) and the local government's general plan (Gov. Code, § 66796.41).

FNI Exemptions are permitted for "[n]onprofit private resources recovery or recycling sites for neighborhood for community type activities approved by a local governmental entity" (Gov. Code, § 66784) and if the facility is not contrary to public interest, an insignificant quantity of solid wastes is to be disposed and the "nature of the solid wastes poses no significant threat to the public health, the public safety or the environment." (Gov. Code, § 66784.4.)

The Act states before issuance, modification or revision of a solid waste facility permit, it shall be ensured "primary consideration is given to preventing environmental damage and that the long-term protection of the environment is the guiding criterion." (Gov. Code, § 66796.33, subd. (a).)

Thus, under state law at the time of the amendment, which required adoption of a solid waste management plan and consistency with a general plan before approval of new or expanded solid waste facilities, the City's argument the uses were permitted without the amendment weakens considerably.

Finally, we note the zoning ordinances in the existing general plan which the City asserts permitted such facilities to be located in non-residential areas by special use permits refer to "refuse and garbage dumps" (San Marcos Zoning Ordinance, § 480 (15)) and "public utility and public service uses and structures, including, but not limited to, power and transformer stations" (San Marcos Zoning Ordinance, § 481 (1)). It seems to us the facilities authorized in the City's solid waste management facilities designation are not merely "refuse and garbage dumps" nor merely "public utilities." We question whether these zoning categories encompass the facilities contemplated by the solid waste management facility designation.

V

The City argues since the amendment required a special use permit and EIR before the development of any new use at the San Marcos landfill site, an EIR was not required at the time the amendment was adopted; a later EIR would be sufficient. The City states "California courts have repeatedly sanctioned the use of subsequent environmental evaluation of future projects subject to a special use permit requirement where the first project (GPA 02-84) does not commit the Lead Agency to those projects." To support this assertion, the City cites a number of cases: *City of Poway v. City of San Diego*, 155 Cal.App.3d 1037, 202 Cal.Rptr. 366; *Perley v. Board of Supervisors*, 137 Cal.App.3d 424, 187 Cal.Rptr. 53; *Lake County Energy Council v. County of Lake*, 70 Cal.App.3d 851, 139 Cal.Rptr. 176; *Plan for Arcadia, Inc. v. City Council of Arcadia*, 42 Cal.App.3d 712, 117 Cal.Rptr. 96; *Hixon v. County of Los Angeles*, 38 Cal.App.3d 370, 113 Cal.Rptr. 433.

Significantly, only one of these cases (*City of Poway v. City of San Diego*, *supra*, 155 Cal.App.3d 1037, 202 Cal.Rptr. 366) even tangentially involves a general plan amendment and in that case an EIR was prepared. These cases involve specific projects (e.g., exploratory drilling, mining) and the question presented to the courts was whether a project was part of a larger project which required the local agency to address the larger project's potential cumulative effects or whether analysis of the cumulative effects from subsequent development could wait until such time as a permit for the later development was sought. The court in *Lake County Energy Council v. County of Lake*, *supra*, 70 Cal.App.3d 851, 854-855, 139 Cal.Rptr. 176, observed:

FN2 In *City of Poway v. City of San Diego*, *supra*, 155 Cal.App.3d 1037, 202 Cal.Rptr. 366, the City of San Diego in approving a residential development amended its general plan. An EIR was prepared which addressed the environmental impact caused by the general plan amendment. The thrust of the case was directed at the

adequacy of the EIR, an area where the scope of judicial inquiry is limited. The City of Poway contended the EIR failed to sufficiently address the cumulative effect of later development in the area. We held San Diego sufficiently addressed the environment concerns and more specific analysis could await and be appropriately delayed until approval of the later development was sought. Thus, in *City of Poway v. City of San Diego*, *supra*, unlike the instant case, there was an analysis of the potential environmental impacts of the general plan amendment.

"While it is clear that the requirements of CEQA 'cannot be avoided by chopping up proposed projects into bite-size pieces' which, when taken individually, may have no significant adverse effect on the environment (*Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726, [117 Cal.Rptr. 96]), it is also true that where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences. [Citation.]"

Under the City's argument, an EIR would never be required for a general plan amendment so long as somewhere down the road an EIR was required. That is not the law. The cases City cites do not support its position; those cases do not concern whether an EIR needs to be prepared for a general plan amendment. Generally, in cases involving general plan amendments, the local agency has either prepared an EIR or was required to do so. (See *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 217 Cal.Rptr. 893; *City of Poway v. City of San Diego*, *supra*, 155 Cal.App.3d 1037, 202 Cal.Rptr. 366; *Rural Landowners Assn. v. City Council*, *supra*, 143 Cal.App.3d 1013, 192 Cal.Rptr. 325; *Twain Harte Homeowners Assn. v. County of Tuolumne*, 138 Cal.App.3d 664, 678-679, 188 Cal.Rptr. 233; *Environmental Council v. Board of Supervisors*, 135 Cal.App.3d 428, 439-440, 185 Cal.Rptr. 363; *Environmental Planning & Information Council v. County of El Dorado*, *supra*, 131 Cal.App.3d 350, 182 Cal.Rptr. 317; *City of Santa Ana v. City of Garden Grove*, *supra*, 100 Cal.App.3d 521, 160 Cal.Rptr. 907; see also *Bozung v. Local Agency Formation Com.*, 13 Cal.3d 263, 278, 118 Cal.Rptr. 249, 529 P.2d 1017; Cal.Admin.Code, tit. 14, §§ 15378, subd. (a)(1), 15127, 15146, 15166.)

As the court noted in *City of Santa Ana v. City of Garden Grove*, *supra*, 100 Cal.App.3d 521, 160 Cal.Rptr. 907:

"The fact that the enactment or amendment of a general plan does not directly effect a physical change in the environment does not remove it from the scope of CEQA.... Under current law, general plans do have an ultimate effect upon physical changes in the environment.

"...

"The application of CEQA to the adoption or amendment of a general plan also comports with the policy that the environmental consequences of a proposed activity, whether public or private, be considered at the earliest possible stage.... Compliance with CEQA at the general plan stage will not result in wasteful duplication of EIRs if one is required. The report prepared at the general plan stage may be used 'as the foundation document for EIRs subsequently prepared for specific projects within the geographic area covered by the general

plan.' (Guidelines, § 15068.5.)" (Id. at pp. 531-533, 160 Cal.Rptr. 907.)

Even if a general plan amendment is treated merely as a "first phase" with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a "first phase-general plan amendment" must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment. Only then can the ultimate effect of the amendment upon the physical environment be addressed.

The fact later development or expansion of facilities can occur only after a permit is obtained and an EIR prepared does not excuse the City from addressing the potential environmental impacts of GPA 02-84. Such an evaluation should address whether the uses permitted by the designation and not covered by the 1977 EIR for the landfill should be allowed, even by permit, on these 200 acres. This is a separate question from the question whether a particular facility should be granted a permit in an area already carrying a solid waste management facility designation.

The fact future development is not certain to occur and the fact the environmental consequences of a general plan amendment changing a land use designation are more amorphous does not lead to the conclusion no EIR is required. The CEQA Guidelines (Cal.Admin.Code, tit. 14, et seq.) recognize an EIR for the amendment of a general plan will necessarily be less detailed. Section 15146 of the Guidelines states:

"(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan ... because the effects of the construction can be predicted with greater accuracy.

"(b) An EIR on a project such as the adoption or amendment of a ... general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow."

Thus the CEQA guidelines address the City's argument that the difficulty of assessing future not-certain-to-occur impacts of a general plan amendment excuse preparation of an EIR; such difficulty only reduces the level of specificity required and shifts the focus to the secondary effects.

Moreover, in the instant case, it can hardly be said future projects were "unknown" or merely speculative. Our review of the administrative record leads us to the conclusion the general plan amendment here was adopted not merely to comply with state law in the abstract but as a necessary first step to approval of these "unknown," uncertain-to-occur future projects. This conclusion is based on the numerous comments addressed to the City Council expressing concern about approval of a trash-to-energy plan. The representative of the company desiring to build this plant was one of the speakers at the hearing and has filed an amicus brief on appeal. The Planning Director noted an EIR for the proposed trash to energy plan had been in progress since August 1983, and stated the amendment would allow the City "to appropriately review and assess any future projects such as the trash to energy

project or a proposed methane extraction project...." Both of these allegedly "speculative" future projects were, in fact, approved within seven months of the general plan amendment: the resource recovery project in October 1984, the methane gas recovery project in March 1985.

Under these facts, it is apparent the City impermissibly "chopped up" the project into at least three separate projects--a general plan amendment, a trash-to-energy or resource recovery project and a methane extraction project. This is exactly the type of piecemeal environmental review prohibited by CEQA. "... CEQA mandates '... that environmental considerations do not become submerged by chopping a large project into many little ones--each with a minimal potential impact on the environment--which cumulatively may have disastrous consequences.' (Citations.)" (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo, supra, 172 Cal.App.3d 151, 165, 217 Cal.Rptr. 893.*) The CEQA Guidelines require a project to be defined broadly (Cal.Admin.Code, tit. 14, § 15002, subd. (d)) and states if the project could be described "as either the adoption of a particular regulation ... or as a development proposal which will be subject to several governmental approvals ... [the city] shall describe the project as the development proposal for the purpose of environmental analysis." (Cal.Admin.Code, tit. 14, § 15378, subd. (d).) This the City did not do.

We question whether the Legislature intended local governments to site such facilities--as the trash-to-energy project contemplated here--through zoning for "garbage dumps" and "public utilities" in light of its mandate that local governments adopt comprehensive plans to address solid waste management, designate specific lands for such facilities, ensure compatibility of surrounding uses and ensure consistency of siting with the solid waste management and general plans.

FN3 Gov. Code, section 66796.41, subd. (b)(1), states the requirement of consistency with a general plan for a new or expanded solid waste facility may be met "if an area is zoned for the siting of a solid waste facility which is designed to produce an alternative source of energy through conversion of solid waste material into energy, synthetic fuels, or reusable materials...."

Finally and most important, to allow the resource recovery project approval to stand would be to sanction piecemeal environmental review, allowing one aspect of a project to be approved before the environmental consequences of the larger project are reviewed.

VI

The City also argues Christward failed to present any substantial evidence supporting a fair argument the general plan amendment would have a potentially significant environmental impact. First, we think it is apparent the concentration of solid waste facilities in one particular area is likely to have a potentially significant environmental impact. Moreover, Christward at the hearing raised issues as to the impact of locating a trash-to-energy plant at the landfill site, a project clearly with potentially significant environmental consequences as demonstrated by the fact an EIR had been in progress since 1983 and the City attached 111 conditions to its issuance of a permit to the trash-to-energy facility.

Christward also raised the potentially adverse effect on its religious retreat. The CEQA guidelines state a city in amending a general plan should address the secondary effects on the amendment. (Cal.Admin.Code, tit. 14, § 15146, subd. (b).) The Guidelines also state "economic or social effects of a project may be used to determine the significance of physical changes caused by the project." (Cal.Admin.Code, tit. 14, § 15131, subd. (b).) The following example is given:

"If the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices." (Ibid.)

Christward presented evidence that the presence of solid waste facilities would disturb its religious practices, worship in the natural environment of the Cresthaven Retreat.

Moreover, Christward also pointed up the deficiencies in the City's own environmental analysis. The City's form initial study failed to list the address or legal description of the project. The "proposed use" was described only as "General Plan Amendment to the Land Use Element, specifically the Questhaven/La Costa Meadows (South City) Community Plan." The space for size of the parcel was left blank. The initial study indicates the amendment is not part of a larger project, and does not involve a change in pattern, scale or character of the general area of the project. The initial study does not acknowledge a single environmental consequence.

The Negative Declaration also uses a check mark format with a series of possible environmental consequences and a choice of "yes," "no," or "maybe." Every possible environmental consequence is checked "no." What analysis was done was only in terms of the San Marcos Landfill. The Negative Declaration concludes the 1977 EIR for the landfill adequately addressed all environmental concerns. While CEQA permits, even encourages, the use of earlier EIRs (see Pub. Resources Code, § 21003), the 1977 EIR here does not suffice. It would be sufficient if all the City was doing by amending the general plan was acknowledging or renaming an existing use, but the City was doing much more. The 1977 EIR addresses only the landfill and failed to inform the City and the public of the possible environmental impacts from the designation allowing new solid waste management facilities at the site and the cumulative effect from those projects. Thus, the City's assertion it could find no "fair argument" there would be any potentially significant environment impacts rests, in part, in its failure to undertake an adequate environmental analysis.

The judgment is reversed and the writ of mandate should issue.

WIENER and JONES, JJ., concur.

Assigned by the Chairperson of the Judicial Council.



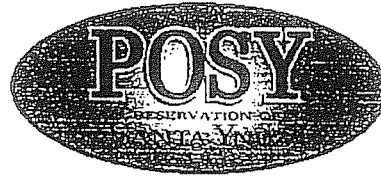
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P.O. Box 727 - Los Olivos, CA 93441 - (562)693-5998



P.O. Box 1945 • Santa Ynez, CA 93460

September 13, 2006

Santa Barbara County Board of Supervisors
C/o Supervisors Firestone and Gray
105 East Anapamu St., Room 407
Santa Barbara, CA 93101

Subject: Santa Ynez Community Plan / Fee-to-trust policy

Dear Supervisors,

We the undersigned community groups of the Santa Ynez Valley formally request that you consider the attached "Fee-to-Trust" policy to be inserted into the Santa Ynez Community "draft" plan to be studied in the environmental review process.

POLICY: The County of Santa Barbara government will oppose the approval of all fee-to-trust applications filed within the Santa Ynez Valley and within the boundaries of the Santa Ynez Valley Plan.

Key Factors that support this policy:

Once Land is taken into trust via the fee-to-trust process by the federal government for use by a tribal or other entity, the use of the land would subsequently be entitled to "sovereign immunity".

SOVEREIGN, as defined in the Webster New World Dictionary is: "supreme and independent political authority". By this definition alone any and all government-to-government agreements would be legally unenforceable.

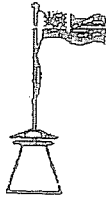
The results of the fee-to-trust process and "sovereign immunity" are:

- 1) Loss of property and sales tax revenues for the citizens of the community (i.e., for police, fire, schools, hospitals, roads, sewer, water systems, bridges, etc.)
- 2) Loss of regulatory land use controls to the citizens of the community (i.e., no zoning laws)
- 3) Strain on infrastructure that is dependent on by the citizens of the community: roads, water, and electricity (i.e., traffic congestion on the highways and roads with substantial increase in vehicle emissions – air pollution).
- 4) Loss of Safety to the citizens of the community (i.e., increased crime)
- 5) Unfair business advantages that have a negative impact on the citizens of the community (i.e., no retail sales tax, no prop tax, immunity from U.S. legal proceedings, etc.).
- 6) Unfair labor practices (i.e. State minimum wage and anti-discrimination laws are not applicable).

Respectfully submitted,

Doug Herthel
President, Preservation of Los Olivos

Jon Bowen
President, Preservation of Santa Ynez



Preservation Of Los Olivos

PO Box 722
Los Olivos, California 93441
PreservationOfLosOlivos@Yahoo.com

June 26, 2003

Planning and Development
Santa Barbara Offices
123 E. Anapamu
Santa Barbara, CA 93101

To: County of Santa Barbara Planning and Development / Valentin Alexeeff and
David Lackie and GPAC / Lansing Duncan


Dear Valentin, David and Lansing,

On June 25, 2003, P.O.L.O. entered into escrow with Montanaro Family Limited Partnership to purchase the real property owned by Janice Montanaro Yates on Grand Avenue in Los Olivos, CA and described as parcels 135-240-001, 135-180-007, and 135-200-004.

On June 11, 2003 and June 25, 2003 Lansing Duncan and David Lackie, in open meetings, reported that written requests of the property owners would be "weighed heavily" against rezoning of the subject parcels. As such, we respectfully request that there be no change of zoning of the property.

Our wishes are in accord with the attached letter of June 16, 2003 by Janice Montanaro Yates.

Sincerely,


Guy Savage
P.O.L.O. President

Cc: Gail Marshall
Stephen Peterson
Julie Harris
GPAC Committee

Attachment: Letter from Janice Montanaro Yates dated, 6/16/03

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S.B. COUNTY
PLANNING & DEVELOPMENT

October 18, 2003

Mr. Don Thomas
Division of Housing and Community Development
Sacramento, California 95814

Re: Santa Barbara County Housing Element

Dear Mr. Thomas:

We are writing on behalf of the Preservation of Los Olivos (POLO) and the Preservation of Santa Ynez (POSY), two community organizations in the Santa Ynez Valley formed in opposition to the outrageous proposals contained in the draft Housing Element Update prepared by the County of Santa Barbara. The Santa Ynez Valley is a unique environment, rich in agricultural history, with a growing viticulture and tourist economy. Under the proposed Housing Element, much of what makes the Valley special would be lost forever. This plan will create an environmental and economic disaster for this area for all of the wrong reasons. We are asking your help in preventing that from happening.

The purpose of this letter is to inform your department of the gross misstatements in this plan and how the state mandate for affordable housing is being corrupted and abused in the unincorporated Santa Ynez Valley to enrich a few high density developers at the expense of the thousands of residents of the townships of Los Olivos and Santa Ynez. For the reasons stated herein, we ask that you reject the County's plan and require its' revision in a manner in keeping with the applicable state statutes.

Background

The problems began with the regional housing needs assessment (RHNA) prepared by the Santa Barbara County Association of Governments (SBCAG). Pursuant to that study, the rural communities of Ballard, Los Olivos, and Santa Ynez were assigned 580 units. There are a number of legitimate reasons for assigning housing units to a community, however, none of them relate to our situation. For example:

- Reason: To plan for population growth

Fact: The population forecast for the Santa Ynez Valley is 1% growth per year. The addition of 580 units to these communities would represent a 33% population increase over a five year period. Clearly, this rate of growth could not be accommodated given the infrastructure and environmental constraints already facing the Valley (including roads, sanitation, water supply, and recreational facilities). The Housing Element makes no mention of how these issues will be addressed, nor of the

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impacts which would occur as a result of the introduction of so many new units (both in terms of financial and environmental costs to the current residents of the Valley.)

- Reason: To address the jobs/housing imbalance.

Fact: The Santa Ynez Valley already has the second lowest jobs/housing ratio in the County at .63%. There are already far more housing opportunities than jobs in the Valley. Let's not make the already overburdened highway system and air quality any worse by requiring even more people to commute to work.

- Reason: To reduce pressure on the housing market by increasing availability.

Fact: The Santa Ynez Valley has the highest vacancy rate in the County at 8.7%. This is twice the rate on the South Coast (Santa Barbara/Goleta/Carpinteria) and already poses a problem for individual property owners with small investment properties who face difficulties in carrying rental properties during times of prolonged vacancy.

- Reason: To locate housing in proximity to jobs.

Fact: If history is any indication, the lack of jobs in the Valley, when combined with the lack of housing on the South Coast, will result in up to 90% of any new housing units purchased by South Coast employees, thereby exacerbating the traffic and air quality impacts created by commuters. Moreover, the cost of property in the Valley is such that few of the existing jobs available in the Valley pay sufficiently to enable an employee to purchase housing in this region.

In short, we believe the state mandate was intended to create housing opportunities where the jobs are located, thereby discouraging the need for mass commuting. Sadly, the proposed Housing Element achieves the exact opposite. The proposed rezoning of Santa Ynez and Los Olivos alone will result in an additional 11 million hours of commuting per year and untold waste of manpower and resources, not to mention the environmental degradation that will result.

The Jobs/Housing Imbalance

The unincorporated Santa Ynez Valley has an unusual job to housing imbalance in that we have 5000 housing units and only 3000 jobs (unlike the City of Santa Barbara, which has nearly twice as many jobs as housing units, yet is slated to accommodate only a small fraction of the percentage of new units assigned to the Valley.) In order to achieve the volume of new units identified in the plan, the County is proposing high density, urban zoning in a region where the economics, ecology and infrastructure are based upon rural,

agricultural land uses. One example is the Corner Farm in Santa Ynez, a property which has been owned and farmed by one family for more than 150 years. By rezoning this site to DR20, this longtime agricultural site will be under tremendous economic pressure to develop, which could result in up to 160 residential units on 8 acres on a gateway to the Valley. High density residential development such as this, with its attendant cars, resource demands, and noise may be perfectly appropriate in a developed urban setting, but it is completely out of character with the rural nature of the Valley. It is not accidental that there is no high density zoning in the unincorporated Santa Ynez Valley. The reality, which the County seems to ignore, is that the infrastructure that is required to support this type of development does not exist - nor should it. This type of development belongs in urban areas which were designed to provide the necessary services to large segments of the population. When the cost of providing these nonexistent services is added to the cost of construction of the housing, none of these units will be anywhere close to affordable. There is in fact no affordable units provided for in this plan as stated by our own supervisor and several developers that are in the process of purchasing these properties based on the Draft Housing Element Plan.

Another example of the plan's disregard for the state mandate, and of the "reverse" nature of the jobs/housing imbalance in the Valley, is the Housing Element's proposed rezoning of a high profile landmark gateway property on the corner of Meadowvale and Highway 246 in Santa Ynez. In that case, the property is commercially zoned but identified in the plan for high density residential. Eliminating one of the limited commercial sites in the Valley and replacing it with housing only exacerbates the existing jobs/housing imbalance. These kinds of recommendations are completely contrary to the goals of the plan and the desires of the residents and property owners. Housing should be encouraged where it will best serve the community and its residents, not where it will restrict existing operations or plans for the site. There is simply no rational basis why additional housing should be constructed when additional jobs are not available. On this basis alone, the plan should be rejected.

Affordability

Perhaps the most galling aspect of the Housing Element however is its altruistic claim to provide affordable housing opportunities for County residents. This is nothing more than an excuse to vilify those who oppose the plan, by casting them as elitists who want only to protect their investments from the introduction of "undesirable" influences. A careful review of the proposal shows that there is no affordable housing actually designated in the plan. The low income housing argument is in essence mere propaganda being used to promote the rezoning scheme.

There is no doubt that there is a need for additional housing opportunities for very low and low income residents in the Valley. However the Housing Element assumes that the only way to meet that need is through high density, urban style development. Since the first farms and ranches in the Valley were established, housing for low wage workers has been provided by rural-appropriate alternatives such as second units, barn apartments,

garage apartments, farm and ranch housing, and mixed-use solutions. None of these require a "high density" rezone to be effectively implemented. However, the Housing Element overlooks these possibilities for low income housing, and instead inappropriately forces an urban solution on a rural setting. In a further effort to thwart the goals of affordability, the County staff is also proposing to downzone approximately 360 square miles of the Valley, which will all but eliminate hundreds of potentially affordable housing locations (locations which provide jobs). This massive rezone not only removes many housing opportunities, it robs landowners of a large portion of the value of their properties, which will result in the loss of many of these historic agricultural sites, and increased pressure for urbanization of the Valley. Therefore, before any property is rezoned, we request that all available rural opportunities be evaluated and counted toward the Valley's share of the regional housing needs.

Public Participation

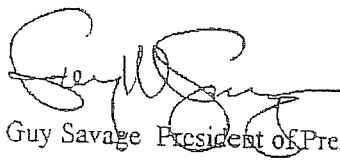
Page one of the HCD Guidelines directs the local agency preparing an update to notify and include the community stakeholders in the planning process from its inception. Rather than follow this directive, the County of Santa Barbara, through both its staff and elected representatives, systematically prevented Valley residents from even knowing about the process, much less becoming involved at the planning stage. Rather than invite the participation of a broad cross-section of the community, the County enlisted the aid of several housing advocates and large-scale housing developers to formulate a housing plan. Not surprisingly, owners of some of the very sites recommended for high density housing have already been approached by some of these panel members who are attempting to cash in on their own "recommendations." Since a developer's profit margin on high density housing is two or three times that of a single family development, it is no wonder that most of the recommendations from this select committee were for rezones of 20 units per acre. Sadly, there is no mechanism for taxing these same developers for the full cost of the infrastructure improvements needed to support these new units, or the environmental impacts which will result. Those costs and impacts will remain to burden all the residents of the Valley long after the politicians and planners, and the developers, have moved on. The high density zoning DR and SLP are designed also to prevent local builders and small contractors from being involved in the building growth by zoning only for apartments and large projects that are only suitable to large high density developers.

A review of the public record will show that the first time Valley residents were introduced to the Housing Element proposal was during a General Plan Advisory Committee meeting on June 19, 2003, some 18 months after the planning process began. At this meeting, the County staff gave an abbreviated presentation (eight minutes in length) and informed the audience of June 20, 2003 deadline for comments. Clearly, neither Government Code Section 65583, the HCD Guidelines, nor fundamental due process are served by an eight minute presentation the day before the deadline. It is well stated that mere lip service is no substitute for meaningful public participation and input.

Conclusion

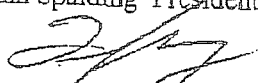
On behalf of POLO and POSY, and the many, many residents of the Santa Ynez Valley who have been disenfranchised through this process, we ask that you not certify the County of Santa Barbara's Draft Housing Element, but rather require the County to prepare a comprehensive plan which meets the obligations of the Government Code and is truly representative of a fair and open public process. We ask you to realize that there are over 1800 buildable parcels already zoned for presently and a potential for second units on these and on the thousands of existing homesites. Please do not be a party to the destruction of the economic and environmental viability of a community that is in balance now and can grow at the projected rate without dislocating the entire region with a growth rate that is not sustainable. Sustainable development is a concept that should be applied to this housing element and it is not being applied by the Santa Barbara County Planning Department. Unsustainable growth may be the biggest threat to the future of our health, education, environment and security. Please do not enable this corrupted developer driven plan to move forward. Your first and most important directive to the Santa Barbara Planning Department was to include the public in this process from its inception and through the process. This is exactly what has not happened. Instead the Planning Department has used confusion and deception to prevent public involvement. We would appreciate a written response to this letter. . Thank you.

Sincerely,



Guy Savage President of Preservation of Los Olivos Inc.

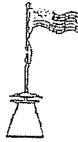
Quinn Spalding President of Preservation of Santa Ynez Inc.



cc: Mr. Valentin Alejeff, Director of Planning and Development
Diannc Meester, Assistant Director
Lisa Plowman, Deputy Director
Supervisor Gail Marshall
Supervisor Susan Rose
Supervisor Naomi Schwartz
Supervisor Joni Gray
Supervisor Joseph Centeno
GPAC members
John Buttny

Senator Tom McClintock
Senator Sheila Kuehl
Senator Bruce McPherson
Assemblywoman Hannah-Beth Jackson
U.S. Rep. Lois Capps

U.S. Rep. Elton Gallegly
Governor Elect Arnold Schwarzenegger
Cathy E. Creswell, Deputy Director Division of Housing Policy Development
Bill Lockyer, Attorney General for California
Barry Cappello
Kathleen Weinheimer



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POSITION STATEMENT GRAND AVENUE MONTANARO PROPERTY LOS OLIVOS TOWNSHIP

January 7, 2003

SPECIAL PROBLEMS AREA:

LOS OLIVOS TOWNSHIP – CLASSIFIED AS A SPECIAL PROBLEMS AREA

As with other regions within the Santa Ynez valley, the Township of Los Olivos is designated as a Special Problems Area. The Santa Barbara County Board of Supervisors placed this designation on the township during the mid 1970's. Some of the chief reasons for placing this designation on the township were high groundwater tables, special flood plain areas, insufficient drainage, and geological instability. The Montanaro Grand Avenue property is located within the designated Special Problems Area.

OVERVIEW OF THE GRAND AVENUE MONTANARO PROPERTY

DESCRIPTION AND BOUNDARIES

The Montanaro family has owned the Grand Avenue property for over a century. The property is located at the southern gateway to Los Olivos, along Grand Avenue, consists of approximately 27.61 gross acres (25.42 net acres), and is zoned through the use of 3 different land use designations. The designations include Commercial Neighborhood (CN), 15-R-1, and Res 1.0. The property is bound to the:

- North by multi-acre, single residence properties.
- West by Alamo Pintado Creek, Alamo Pintado Road, and five-acre properties.
- South by larger (one-plus acres) residential properties.
- East by Grand Avenue itself and residential properties.

The 3 land use designations mirror 3 different lot numbers as noted on page 40, Tract Los Olivos Land Association, R.M. Bk. 1, Page 40, numbers 135-180-007 (approximately 5.90 acres), 135-200-004 (approximately 6.23 acres), and 135-240-001 (approximately 12.76 acres).

CURRENT USAGE

The property contains several commercial buildings. One of the buildings is a market. According to Rife's "Where The Light Turns Gold," it was established in 1889. Many of these commercial buildings have fallen into disrepair. However, one is still in use as a wine tasting facility. Apart from a small piece that is occupied by a single-family dwelling and a small portion that crosses over Alamo Pintado Creek, the remainder of the property has been used for agricultural purposes since its purchase by the Montanaro family.

ZONING DESIGNATIONS

Most of the Montanaro property is zoned for one-acre residential (Res 1.0) or one estate per acre (1-E-1) development. There is a small segment of the property that contains the existing commercial buildings that is zoned Commercial Neighborhood (CN). The northerly



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extension of the Montanaro property is zoned for one-third acre residential (15-R-1) development.

PROPOSED ECOLOGICAL VILLAGE

A new, dense housing development was proposed on the Grand Avenue property. The proposal included 24 single-family homes with detached garages containing second floor guest quarters, 6 attached condominium townhouses, an organic farm (approx 5 acres), a community park (approx 1.75 acres), and a greenbelt/public use element along Alamo Pintado Creek (approx 8 acres). The project was dubbed the Ecological Village.

In an effort to deal with the special problems designation and the potential of contamination to the ground basin lying underneath the property, the project proponents proposed a private sewer system.

In the case of the Montanaro property, the Santa Ynez River Water Conservation District maintains a well within $\frac{1}{4}$ of a mile of the property. Thus, any private sewer system will require special care to ensure that local drinking water is not contaminated. Failure to meet sewage treatment and discharge requirements could result in a forced take-over of the system by the local community or municipality.

The private sewer system may well have the effect of circumventing the protective restrictions now in force via the Special Problems Area designation. To our knowledge, the water quality in the Los Olivos community is at or above the governing agency's quality standards.

REZONING REQUIRED

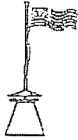
The project would have required a rezoning of the existing property. As mentioned, much of the property is currently zoned for Res 1.0 (1-E-1) usage. However, in order to achieve the density of housing proposed, some of the Res 1.0 (1-E-1) and all of the 15-R-1 would have to be rezoned to a much higher density of 10-R-1.

OTHER CONSIDERATIONS:

SUBDIVISION BASED ON LAND CAPACITY

No community should knowingly increase the possibility of ground water contamination through sewage discharge beyond the land's capacity. Since proven alternatives are not readily available to handle the sewage discharge, the land itself is the key factor as to the formula governing the density of development. According to local regulations, the maximum build-out for single-household, common septic tank usage is 1 residential unit per 1 acre of land. In the case of the Montanaro property, the acreage required per 1 residential unit should be increased beyond the 1 acre of land minimum since there is a major waterway running along one side and through the property. Further, considering the close proximity of the nearest drinking water well, additional caution should be taken if the property is subdivided into small parcels.

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Private sewer companies have the potential to introduce tremendous risks. Since they are not publicly maintained, they can become obsolete, or can come to an operational position where they cannot meet discharge requirements and will have to ask for variances to offset compliance costs, or end up being dumped on the public for repair or replacement. Existing domestic water quality standards protect the finite groundwater basin resource and this finite resource must be protected for current and future generations. Given the Special Problems Area designation for the property, extreme caution should be given to any experimental sewage approach.

SUBDIVISION BASED ON SURROUNDING PROPERTIES

The fact that the property is adjacent to numerous multi-acre parcels, suggests that the minimum designation for a sub-division should also be multi-acre parcels. When you consider the Alamo Pintado Creek's movement, the irregular shape of the parcel, the division of the parcel by roads, a CN designated portion, and its historic use as agricultural property, a reasonable approach should include a minimum five-acre designation. Given that large scale continued farming would not be economically feasible following a sub-division, designations such as Residential Ranchette should be given first consideration. This would allow an individual parcel owner to build a single-family home, a detached guesthouse or barn, and raise a few large animals such as horses. The owner could also consider having a small vineyard, a small fruit orchard, or other small parcel agricultural activity as described in the applicable county land use regulations.

SUBDIVISION BASED ON PROPERTY RIGHTS

There are only three legal parcels on the property. Despite the existence of lines on county documents denoting potential additional parcels, no rights to those parcels have been granted nor are they guaranteed. Since the property has been in the Montanaro family for over a century, it is highly unlikely that the original purchase intent was to subdivide and sell smaller parcels. If this had been the intent, steps would have been taken to subdivide the property long ago. Therefore, one main goal should be to keep some sense of the continued use of agriculture on the property. Large five-acre properties with home sites would be compatible with rural ranchette uses of the land.

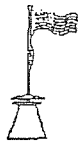
SUBDIVISION CONSIDERING THE PROPERTY AS A GATEWAY

The transition from a rural farming area into a township such as Los Olivos serves as an important introduction to the town. Proper planning suggests that radical changes in housing type or density should be discouraged. Instead, a slow progression from larger to smaller lot sizes is encouraged. Given the multi-acre parcels to the immediate South and North of the Montanaro property, only multi-acre parcel sizes should be given consideration.

SUBDIVISION CONSIDERING CREEK MOVEMENT AND FLOOD HAZARDS

The relationship to Alamo Pintado Creek and the associated potential flood hazards factor into the density formula. Alamo Pintado Creek is relatively new by river standards. A local farmer, attempting to divert an existing creek/stream, created the waterway less than 100

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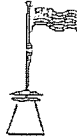
years ago. As a new creek, it is still moving and attempting to find a long-term path through the township. Neighbors immediately adjacent to the Montanaro property have had to significantly bolster the creek's banks to ensure that their property, including their existing home, were not damaged or lost. As such, a significant setback should be considered for any and all parcels that use the creek as a boundary. To help prevent drinking water contamination, the setback should not be used in the calculation of soil capacity for sewage. This suggests that all parcels near the creek should be multi-acre at a minimum. Larger properties would provide safe distances between the future home sites and the creek. This gives added protection from flood waters impacting septic leach field areas and the home sites. It also gives ample planning room for each larger parcel to place the home site area away from Grand Avenue to keep the rural feeling for the area.

SUBDIVISION CONSIDERING EXISTING ZONING REGULATIONS AND OPTIONS

County regulations Section 35-218 Residential Ranchette and Section 35-218.1 should be given significant consideration with respect to this property. These sound zoning regulations are specifically designed for properties such as the Montanaro 27.3 acres. Section 35-218, states: "This district classification is to be applied in Urban and Inner Rural areas and within Existing Developed Rural Neighborhoods where low density residential and agricultural uses are appropriate. The purpose of this district is to preserve the character of an area and to minimize the services required by providing for low density residential development."

SUBDIVISION BASED ON THE VALLEY BLUEPRINT

Goal 1 from the Valley Blueprint emphasizes the desire of the local residents to encourage "planning policies that allow us to live within locally available resources, preserve the rural character of the Valley, improve and maintain existing infrastructure, and protect agriculture." Preserving rural character was defined as a "continued presence of small ranches or farms" and "open fields, oaks, and mountain views are preserved." As one of the few remaining large parcels within the township, the Montanaro property is key to helping meet this goal for local residents. It is one of the few, if not the only, parcel capable of promoting agriculture of any scale, it provides views of the local hillsides, and is a much welcomed open space.



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RECOMMENDATIONS

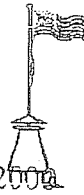
The existing Commercial Neighborhood is a valued and possibly historic district within the Los Olivos Township. It should remain. No changes to the zoning designation should be made.

The remaining property should be re-designated to a Residential Ranchette five-acre (RR-5) zoning designation. This would allow for sufficient buffers along Alamo Pintado Creek, thus protecting water resources and maintaining habitat corridors, would allow for the growing need for single family dwellings with a guest house, would minimize impacts to existing infrastructure (e.g. traffic, roads, and schools), and would encourage continued open spaces and agriculture. It would also allow commonly used, single-dwelling, leach field septic systems to be used without the fear of private sewage treatment on a multi-dwelling scale.

The RR-5 designation would also ensure that the existing sense of balance within the township is preserved. The majority of the smaller parcels in the township are very close to the town's center. An additional subdivision with smaller parcels would create the potential for confusion about the town's center. Is it towards the North end of town near the flagpole and other business? Or, is it near the Southern gateway, where only a couple of small, historical businesses reside?

In addition to the five-acre minimum designation, building envelopes should be specified for any and all parcels that are bordered by or contain a portion of Alamo Pintado Creek. These envelopes should prohibit structures from being built within a minimum of 150 feet from the existing creek banks.

Policy language should be created and included in the current General Plan revision that outlines the above goals.



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September 30, 2000

Dear Chairman Duncan and GPAC Members

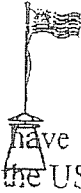
As members of Preservation of Los Olivos (P.O.L.O.), we are committed to maintaining the character and integrity of both the township of Los Olivos and the surrounding rural area, as set forth in the Valley Blue Print and Valley Community Plan. Because the GPAC is a critical component of the Community Planning process, we are providing you our input regarding important issues that remain unresolved from meetings held last May.

At a time when life seems to be characterized by a hectic pace, traffic congestion, and impersonal relationships, the community of Los Olivos offers people a much needed respite. Residents and visitors are drawn to the township by its small town qualities, charm and attitude. When people honk a horn it is to say hi, not hurry up. In today's hectic world, Los Olivos is a unique place where neighbors do more than wave at each other, where people enjoy seeing bicyclists on the road, and where no one is bothered by an occasional horse and buggy ride along Grand Avenue. The township is encircled by farmland and oak covered hills, sights that are no longer evident in California. P.O.L.O. wishes to see these qualities preserved, not cast aside in the name of progress. Too many other beautiful valleys in our state have felt the effects of progress. Consequently, we urge you to consider these facts and our collective views as you make your recommendations tonight regarding the future of Los Olivos and the valley.

Consider designations for the Montanaro Property - The Montanaro property exists along a beautiful and pastoral gateway to Los Olivos and encompasses the Alamo Pintado Creek. This creek flows year round, erodes its banks during heavy rains, and carries away significant amounts of soil. It is a fact that some homes built near this creek are negatively affected by excessive erosion. We believe that these facts should be kept in mind when considering potential changes in the use of this property.

The fertile soils on the Montanaro property have been farmed for more than 100 years, thereby satisfying the Truth In Zoning requirements for classification of this property as farm land. The property is partially bordered on the west by land zoned AG I -5 and was previously bordered on the south by land zoned A-1-10. The primary drinking water well for the town of Los Olivos is located approximately 500 feet down stream from the south end of the property. If the Montanaro property were changed to heavy density zoning, the safety of the town's drinking water would be in jeopardy. Serious

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health problems have
communities in the US

occurred in rural
and Canada as a

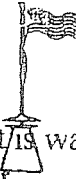
result of septic contamination of well water; clearly this is a catastrophic problem that we need to avoid at all costs. If the GPAC were to recommend that the Montanaro property be assigned even the present density zoning, then Los Olivos may be required to install a sewer system. This would cause severe financial hardships for the local residents and businesses, and produce problems that have occurred in similar small communities. We need to look no farther than Los Osos to see how overdevelopment and the need for sewers is tearing a town apart.

The Riparian Habitat, which extends the length of the Montanaro property, supports many species of plants and animals and serves as an important wildlife corridor in our area. As has occurred elsewhere in the state, high density housing would adversely effect the habitat. The Valley Blueprint and Valley Community Plan recommend preservation of Open Space, Gateways, Agriculture, the Night Sky, and the Protection of Flora, Fauna, and Habitat. It is important to keep these far-reaching recommendations in mind when considering potential changes in the zoning of land near unique areas such as the Riparian Habitat.

While we would prefer to see the Montanaro property remain as farm land forever, we recognize that growth is taking place in the Los Olivos area. With the aforementioned facts regarding the Montanaro property in mind, we believe that the next best choice would be for the GPAC to recommend that the property be zoned Residential Ranchette-RR 5 (one residence per 5 acres) and retain the CN zoning. This type of zoning would satisfy the recommendations of the Community Plan and the Valley Blueprint and the wishes of the community. More importantly, it would help to preserve the uniqueness of the Los Olivos township and surrounding area.

It is a fact that just because a property is zoned a certain designation, that does not mean that the property owner has a vested right in developing it to the full extent of the zoning regulations, because many other factors come into play. At the same time it is a property owners right to develop his or her property or to sell it to the highest bidder if that is their wish. Fortunately as we all become more educated and well informed, we as a community realize that the only way anyone wins is if everyone wins. (Landowner, Developer, Town, residents, flora and fauna and environment) This requires creative planning and creative financing and fund raising. There are progressive fair, ways for communities to purchase open land and reimburse the landowner at a much higher rate than a developer can due to tax advantages that conservation easements, and non profit corporations allow for to encourage land preservation. Recently the people of Carpinteria saved the Carpinteria Bluffs for now

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and the future. It is a
Win situation for

and is a Win
everyone

involved in Carpinteria. Progress can be measured in many different ways.

Increase density of parcels along Santa Barbara Avenue - In order to ensure that the drive from Los Olivos to Solvang remains scenic, we believe that the zoning of Santa Barbara Avenue should remain as it is today. The current one acre zoning provides for four new home's and will allow preservation of local farming activities, as well as growth of apples, hay, lavender, grapes, oaks saplings, or livestock. Adding more homesites along Santa Barbara Avenue will only further increase traffic congestion, further reduce the safety of the drive to Ballard and Solvang, and strain the resources that are currently adequate to support our community. Furthermore, the fact that much of this land is in a low flood plain makes it unsound for more than one dwelling per acre. We request that the Santa Barbara Avenue zoning remain unchanged.

In closing, we strongly urge that you respect the wisdom of Los Olivos' residents and the longtime residents who worked so diligently to develop the Valley Blue Print and Valley Community Plan, and that you honor the spirit in which these documents were created. Please help preserve the uniqueness of Los Olivos by making only modest changes in the present uses of the Montanaro property, and leaving the zoning of Santa Barbara Avenue intact.

Sincerely,

P.O.L.O.

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<http://www.polosyv.org/help/POLOcreation.htm>

The Creation & Growth of

P.O.L.O.

By Rolf Richter

POLO's origin, in March of 2002, was a response to a major threat to our town's character and identity. At that time a major development firm announced plans to construct 32 homes, with detached garages as potential second units and an experimental waste treatment facility on 7 acres of the 27 acre Montanero property adjacent to Grand Avenue in Los Olivos. This was prime agricultural land, which had been in farming for over a century. This would have caused a 62% growth rate in a town that is normally growing at 1% per year and would have irrevocably changed the town's character. Two families with homes close to the property decided to alert their neighbors to the threat by organizing a town meeting. Kathy Spurbeck and Robyn Richter walked the streets with petitions and flyers announcing the upcoming meeting at St. Mark's Church. The response to their presentation and plea for support was greater than they hoped for. The hall was filled with concerned community members and at meeting's end several of the audience stayed behind to pledge their time and effort to fight the development plan. This group constituted our organization's first board of directors. (See names below*) Subsequent evening meetings at the Spurbeck home led to the name Preservation of Los Olivos (proposed by Steve Pappas) and a 501C 4 non-profit status was formed.. Before long POLO had over 100 members who shared a vision to protect our town.

POLO was confronted by a strong County Planning and Development Department and Supervisor whose goal was to "fill-in urban core" with high density housing. The POLO board was told by a head S.B. County planner that the Montanero property was scheduled for "high density development". At this point POLO realized the only option was to purchase the land and embarked on a massive fund-raising effort to buy the property. The property owners agreed to sell to our group and afterwards it was revealed that the Santa Barbara County Planning and Development Department's goal was to rezone the entire 27 acres to allow 5-7 units per acre (small Lot Plan). Los Olivosans and valley friends responded with over a quarter million dollars in donations. How many other small towns of 1000 people can match such generosity? However, this total was still far short of the multi-million dollar cost of the land. The 45-day escrow time was running out so in the eleventh hour a POLO board member rapidly refinanced and borrowed to purchase and preserve the property. This marked POLO's first success, but the next challenge was just around the 'corner'.

The future of the town's corner park was in doubt. Although, classified as commercial land, its owner, Lavinia Campbell, had kindly allowed the town to use it as an unofficial community park for forty years. Upon hearing of POLO's efforts to preserve the Montanero Farm, Mrs. Campbell contacted our group about the possibility of acquiring the property. A board member flew to her home in Washington State and an agreement for POLO to purchase the land was consummated. The great majority of donors for the Montanero Farm agreed to allow their money to be used to buy the park and thus "Lavinia Campbell Park" was dedicated on July 31, 2004, just 4 months prior to Lavinia's passing at age 98. The highlight of the well-attended dedication ceremony was the mounting of the "Lavinia Campbell Park" plaque by Michael Byrne on a large

Alex Rossi – nowadays all of us are more aware and concerned about what might happen to Indian burial grounds or artifacts – that area on the Montanero properties will certainly disturb things of that nature. Don't hear anything being discussed about this.

http://www.countyofsb.org/plandev/pdf/comp/planareas/santa_ynez/sy_gpac_files/Meeting24/MinutesOctober3_2002.pdf

SANTA YNEZ VALLEY GENERAL PLAN ADVISORY COMMITTEE

Minutes of the October 3, 2002 Meeting

Members Absent: Pat Sullivan, Dennis Beebe, Joanna Wogulis, Michelle Hinnrichs

Staff: Planning Department: David Lackie, Matt Murdock, Greg Mohr, Dave Ward

Third District: Kristen deWit

Materials Distributed:

- Agenda October 3, 2002
- Memorandum on GPAC Meeting No. 24 (mailed to GPAC on 9/25/02)
- Summary of Los Olivos Township Urban Area Land Use Options
- Power Point Slides on Los Olivos from POLO
- Land Use Designation and Zoning regulations
- Letter from P.O.L.O.
- Letter from Lonnie & Susan Erickson
- Summary of Inner Rural Land Use Areas
- Pictures of Jensen proposed property split

I. Meeting called to order 6:10 pm

II. Pledge of Allegiance

III. Review of Minutes

- July 25, 2002 : Rudi van Enoo made a motion to approve the minutes of July 25, 2002. Jody White seconded. 10-0-1(Rich Morgantini abstained). Motion passes.
- August 8, 2002: Lansing Duncan made the following changes: 1) Section V – in regards to Brian Foss presentation – the original ND did not evaluate the traffic impacts of hauling grapes. 2) End of discussion under GPAC comments – the last point that was made was that the original size and number of events were perhaps inappropriate for the constraints of the site. 3) John Buttny's comment about looking into no parking signs was for both sides of Alamo Pintado. Rudi van Enoo made a motion to accept the minutes of August 8, 2002 with the changes. Judy Hale seconded. 7-0-3 (Mark Preston, Rich Morgantini, John Evarts abstained). Motion passes.
- August 22, 2002: Lansing suggested using 9-0-2 format for motions then listing abstentions. Jody White made a motion to accept the minutes of August 22, 2002 with changes. Judy Hale seconded. Motion passes unanimously

IV. Administrative Items

- Mark Preston – asked that his previous request from the last meeting be replaced with a discussion regarding procedure for the GPAC and asked that it be tabled until between Phase I and Phase II of the plan.

- Dave Ward – next GPAC Meeting on Oct 17th will be at the Los Olivos Grange Hall for Parks, Recreation and Trails update and continued Land Use discussion on the Inner-Rural area.

V. Public Comment

- None

VI. Land Use & Zoning – Los Olivos Township

- Dave Ward presented overview of Los Olivos land use options.

- GPAC Questions:

- John Evarts – know that there is potential build out of 140 units under current zoning – have any of the consultants looked at w/o sewers how many units could be built?

Dave Ward – they have not. Know that there are significant constraints now. One caveat is that the State is looking at septic standards statewide that may result in stricter standards. The Community Plan can identify options for further study and consideration by the community.

- Rudi van Enoo – regarding septic issue – if that is natural constraint – barring someone coming in and mandating standards – can we leave it alone and accept it as a natural constraint.

Dave Ward – in the Orcutt community plan tied it to policy language. That is what will be done in this case.

- Jody White – the 141 units are if the septic was resolved.

Dave Ward – not just the septic issues, there is also topography, etc.

- John Schnittker – state requirements – does the 141 units meet that requirement for Los Olivos?

Dave Ward – explained how state numbers are allocated in the County. Right now we have the numbers for the houses per the Housing Market Area, but do not have it for the income-range that is being asked for. Objective is to provide a range of housing units in those income categories.

Greg Mohr – housing targets aren't focused on specific townships – it is focused on the Housing Market Area.

- John Peckham – what is the definition of mandate? What is the penalty for not building those houses?

Dave Ward – focus shouldn't be achieving these numbers of houses – it should be the structure that could potentially allow for those numbers to be built. Want to show a good faith effort to the state to certify the County Housing Element

- John Peckham – the mandate is just that the county doesn't get the money?

Dave Ward – the same discussion is occurring in other parts of the state. They are looking at trying it to other incentives/disincentives to prevent people from not complying. The Community Plan will need to be consistent with the existing General Plan Housing element, even if the

Housing Element Update did not go forward.

- Rich Morgantini – couple of bills that the Governor signed this week – AB 1866 and AB 2292 - would like staff to come back and talk about these.

- Judy Hale – don't ever remember having a decent discussion on farm worker housing. Would like to request a better discussion on it.

- Bob Crowe – what is the zoning on the Montanero Property?

Dave – there is a range – mix of Res 1 acre and Res 3.3 and commercial. Talked about using DR designation for this area.

◦ Doug Herthel and Guy Savage of POLO presented info on POLO and what they would like to see for Los Olivos. (See written submittal)

- David Crosby – keep seeing state mandate – there isn't a state mandate. We don't have to do it. We don't have to do low income housing here.

- Jayne Martin – is there any possibility for the Montanero property to be designated a historical landmark?

Lansing Duncan – that could happen. There was concern that the buildings were not in good enough shape and could be dangerous.

Dave Ward – talked about having the Historical Landmark Committee look at the planning area and see if there were any areas that could be designated that way.

- Jan Crosby – concerned that staff keeps answering questions with the need to think long range and that will end up with high density housing.

- Dave Ward – Staff is working with and for the GPAC and public to develop the Community Plan. The options presented are just that, options for consideration and feedback to staff on how the community and GPAC would like to see the community change or not change in the future.

- Richard Crutchfield – remember when this project was intro by John Patton (former P&D Director)– seemed to think that things were working well in the SYV general plan area and that things would be left pretty much the same. Montanero property is highest grade of soil in the county – ag preservation is very important. Would like to see the six communities remain separate.

- Puck Loness –the reason that there are so many people here tonight is because Los Olivos is an example of a community in balance and harmony. What we have already happening in the community is good – wouldn't want a single development to come in and throw everything out of kilter. Only way can see increased commuter traffic would be for the commercial core to increase and run amuck. Community is what you perceive visually. Would like to see future discussion of design overlays. Would like to see historic landmark designation on the Montanero Field and buildings.

Dave Ward – have previously talked about community design issues in April. This is an important community concern.

Lansing Duncan – Community design sub-committee addressed two implementation issues for design guidelines – one was future guidelines for each community. The other one was that commercial development is happening so rapidly that some issues need to be addressed in the plan.

- Dennis Showan – concerned about serving the greater need of society – look at the cities and the character that is being lost when we talk about putting a bunch of houses on a parcel. Don't want it to happen here.

- (John Schnittker left at 8:00 p.m.)

- Jan Flemming – certainly involved in the whole process. Don't see anywhere else that you are talking about putting the kind of development on the Montanero property.

Lansing Duncan – the GPAC did not bring the Montanero property project forward, but GPAC is tasked by the Board of Supervisors to look broadly on land use and make recommendations on the Plan.

- Alex Rossi – nowadays all of us are more aware and concerned about what might happen to Indian burial grounds or artifacts – that area on the Montanero properties will certainly disturb things of that nature. Don't hear anything being discussed about this.

Lansing Duncan – impacts to cultural aspects would be part of any Environmental study

- Steve Pappas – 1) we don't have a plan that is being presented to the GPAC either now or in the future that would follow the special problems restrictions.

Dave Ward/David Lackie – no, but existing constraints are one reason for changing land use designations in the Community Plan. Other Community Plans with physical constraints for water supply or wastewater have established strong policy language that requires adequate public services before development permits are granted.

- Steve Pappas – would like to see the building with those restrictions taken into consideration. 2) Montanero property required a rezone – the 141 is current zoning – that would bypass that restriction. 3) on the mandate – it is a state issue and they are saying that if you the county fulfill certain planning requirements in exchange for that plan we will give you opportunities for grants.

- Dave Ward/David Lackie – there are implications for grant funds, but possibly more implications as the state legislature is looking at incentives/disincentives to jurisdictions statewide struggling with housing.

- Phillip Dewey – GPAC needs to understand that the maps are antiquated and the residents of Los Olivos don't think of themselves as living in an urban area they live in a rural area.

- Ben Bottoms – traffic patterns – concerned crossing double yellow line down Grand Ave. Railway and Grand there is a double yellow line.

Within section of 154 from the Los Olivos Market down to Alamo Pintado would like to see GPAC develop some safety measures for crossing in those areas. Will some of the mansions down the line provide housing for multiple families. Think about Bed & Breakfasts for Los Olivos. Should neighbors in the commercial corridor rally together to get speed bumps on either side of Grand. Parks – POLO buy the land, build the infrastructure for recreation.

- Guy Savage – reminded GPAC of 3 recommendations from earlier POLO

presentation (redesignate the existing three Montanero parcels to RR 5 acres retaining the CN zoning, no increase in housing density along Santa Barbara Ave and no additional density changes elsewhere in the Los Olivos township)

◦ GPAC Comments:

- Judy Hale – Los Olivos does not have a well – the well is SYRCD I#1.

- John Evarts - #5 is where you get to the Montanero property. Think should start there.

- Lansing recommended that the GPAC address each option in the order on the summary sheet.

◦ On numbers 1-4

- GPAC Members asked: – on #3 – a lot of this is houses that could be converted to commercial; if there was any thought given to parking – or would that be a restriction; Ben Bottoms had suggested that the lot behind R Country Store could be created into a parking lot; would like some overlay for the park to keep from losing it; San Marcos property – discussed doing mixed use instead of hard core commercial and residential; potential use of the Victorians for B&Bs. Need zoning to consider that type of use; urban boundary line is encompassing property lines instead of cutting properties in half. We are moving it out to follow property lines; on 3 – would like to see more direct language speaking of overlays. Also concerned about the types of commercial used – potential car lot on 154. Mattie’s Tavern is another area of concern for general commercial.

- Staff answered: the zoning designations now require parking – there are ways that parking could be dealt with thru policy language; had asked staff what the commercial designations were. Spent a lot of time looking at different options. Talked of doing mixed use over the whole commercial core including that strip;

◦ Public Comments On numbers 1-4:

- Richard Crutchfield – asked what kind of commercial designations would be conjured to fit Los Olivos. Overlay idea.

Lansing Duncan– idea is for staff to come back with a custom fit.

Dave Ward– Realistically, staff can provide this overlay in March to the GPAC when it comes back as a Preliminary Draft Plan package.

- Chuck Gandolfo – asked about the commercial CH block that has a C2 in front of it.

Dave Ward – GPAC asked staff to do the research on it

- Puck Loweness – parking in the commercial core. Is there any way to look at innovative ways for parking?

◦ GPAC Motion:

- Rudi van Enoo made a motion to reconfirm direction given to staff in items 1-4 with special consideration given to the issues presented by committee members this day and the inclusion of consideration of overlay concept over general commercial that would limit uses in number 3 bullet one. Jody White seconded. Motion passes unanimously.

◦ Number 5 :

◦ Second & Third Bullet Increasing Density of existing developed neighborhoods.

- GPAC Members commented/asked: include one other area – the block bordered by Olive St.; believe that we as a group generally said no to increasing density along Santa Barbara Ave. Think we were addressing a middle course on the increased density in developed neighborhoods; think there is a possibility for higher density on the old Song property – where the dairy was. Grand and Hollister – south side; had some reservations about increased density there due to the riparian corridor; how about duplexes being put in there like the ones in Santa Ynez;

- Staff answered: when discussed the Song property previously there were concerns about increasing density along the creek; they are doing that in Santa Ynez at the RES 12.3 designation (housing units per acre).

◦ Nicole Pena made a motion to leave things as they are now to maintain the existing land use and zoning relative to bullets number 2 and 3 under number 5. John Peckham seconded. Motion passed unanimously.

◦ Montanero Property

- GPAC Members asked: what are the chances of the zoning changes to get approved relative to the Ecological Village proposal; – the problem is that the current zoning allows for 40+ units on that property. Right now someone has the right to chop it up and do that. Also can't arbitrarily change the zoning to less because it causes the property value to drop. The DR was just a way to allow the plan for this many units; would it be possible to consider under list of options that we look at redesignating the property to DR; is it ok to say that if you get all the benefits then agree to the clustering otherwise don't agree to clustered subdivision; POLO presentation was great. Hope you can organize other communities. Mr. Herthel said that property rights are paramount. Not saying that want to see 40 units on that property. Would like POLO explore every other option with the ranchette zoning; the Montanero Property is inside the urban boundary and has been residential designation for many years. The other property is outside of the boundary and is zoned ag. Asked staff to show where else there is ranchette; expressed concern over appearing as spot zoning; GPAC asked that there be an overlay put on the property that would protect open space and park; – if owner came in tomorrow and asked to build out the full units would they be allowed; had many discussions on rural ranchette – what is the potential of having a rural ranchette map that has the actual ranches on it; The reality is just because something is zoned something doesn't mean that is what can be built. Think should have POLO work with the County; would be nice to have a park on this property. Concur totally that Alamo Pintado Creek is remarkable. Direct that future development of this property have an overlay to ensure public benefit. As we ask staff to look at alternatives that a development plan be included for those three parcels be included. Give staff general direction to provide a range of options.

- Staff answered: During a Community Plan process, the Board of Supervisors typically does not do rezones & general plan amendments unless there is direct community benefit. Projects with rezones & general plan amendments are intended to be considered during the Community Plan. There are a lot of hurdles that the applicant would have to clear; the DR is a tool that could be used to benefit the community. You can also have a range of options with that designation to get parkland, protect natural resources, etc; the only other Residential Ranchette designation is by Ballard Cyn and 154. Keep in mind we try and keep consistency in land use and zoning; think that the community should provide direction on the closest densities that are appropriate for that property. Staff supports GPAC direction tonight for Staff to work with the community & POLO to study options come back with; under a standard subdivision maximum theoretical build out would not be likely considering the constraints of the creek.

- Public Comment:

- i. Puck Loweness – think is a difficult property to review from a map due to the other issues like flooding and habitat etc. Could skew what is being discussed tonight.
- ii. Steve Pappas – recommended that the GPAC work with POLO and the community to come back with ideas to protect the open space and keep the Montaneros property rights.
 - GPAC considered motion that staff complete additional research on land use options for the 3 Montanero properties (3 residential designated parcels and the portion designated Commercial Neighborhood) including the following:
 - Residential Ranchette (RR) Designation (5 acre minimum parcel size)
 - Range of Residential designations (RES) with minimum parcel sizes of 1-3 acres
 - Use an Overlay or “DR” designation as a planning tool that could provide a public benefit, such as a park or protection of resources (creek and/or agriculture) with some development of the property
 - A combination of the above
 - In all cases, maintain the Commercial Neighborhood designation
 - Jody White made a motion that staff complete additional research noted above for the Montanero properties. Rudi van Enoo seconded. Motion passed unanimously.

VII. Meeting adjourned.

August 22, 1984

David Stone
Department of Environmental Resources
123 Anapamu Street
Santa Barbara, California

RECEIVED
AUG 27 1984

S.B. COUNTY
RESOURCE MGT. DEPT.

To Whom It May Concern,

The proposed subdivision on the George Suman property in Los Olivos appears to have some major planning problems that would create a major environmental impact on the residents of the Los Olivos area.

The proposed subdivision will create 4-7 homesites on a piece of property that is 70% Alamo Pintado Creek. The flood plane takes up the majority of the property in such a way that there is only very narrow strips of land on either side of it and these strips of land are boundaried on the opposite sides by two busy thoroughfares-Santa Barbara Ave. and Grand Avenue.

The very small building envelopes designated on the parcel map sent to me are questionable in that if the recommended setbacks from the creek and roads are followed there is less room than specified on the maps. An independent survey will indicate this.

Another concern is the effect of 4-7 septic systems will have on this delicate area in which septic systems are marginal because of the soil types. A concern I have is that the extremely close proximity to the large creek bed would allow septic fluid to move laterally to the point of least resistance. It would flow laterally into the creek. The major water well for the town of Los Olivos sits just on the other side of Grand Avenue which is the southern border of this subdivision.

The creek is an amazing rushing torrent at times in the winter and it could easily change its course if anyone were to disturb its flora along its banks. Any type of scrubby removal or land clearing could easily cause major washouts into these building envelopes. This has already been a major problem to a home built so close to this creek near Ballard. The creek nearly undermined a very substantial home within a short number of hours one rainy day.

My other concern is a deal the Transportation Department has purportedly made some time ago with the developer. On the Transportation Department map they show a totally new road cut across Alamo Pintado Creek utilizing a new bridge, and abandoning the old road and bridge. This new road further cuts up this piece of land making the proposed 4-7 parcels even smaller. The road project would eliminate approximately two acres from the South end of the subdivision. This would leave an infinitely small amount of land that is available to build on.

The reasoning for the road change and new bridge I think needs to be questioned also. I have lived adjacent to the Alamo Pintado and Grand intersection for twelve years and drive through it at least twelve times per day. I have six employees that do the same. We have never seen a traf accident at this location nor have we witnessed people running stop signs. Since we have never noted a problem here I question the reasoning being used to put a new bridge and road in at the proposed new location on the Suman property.

In closing I think the major impact on the environment, flora and fauna, traffic flow, drinking water quality, flood control and effects of a new bridge in this delicate and very small area needs to be addressed before a parcel map is granted.

I would like to see an independent survey done and soil testing done so that if the parcel map were granted somebody would not end up purchasing a small piece of property he or she could not build on.

Sincerely,

Prof. J. Herchel D.V.M.
Souglas J. Herchel D.V.M.

Copies to;
Delwayne Holmdahl
Dr. Bill Wallace
Darrell Schuyler
Mr. George Suman



COUNTY OF SANTA BARBARA
CALIFORNIA

PLANNING COMMISSION

COUNTY ENGINEERING BUILDING
123 E. ANAPAMU ST.
SANTA BARBARA, CALIF. 93101
PHONE: (805) 963-7135

October 25, 1984

George Suman Jr.
5420 Huckleberry Lane
Houston, Texas 77056

RE: TPM 13,535 APN 135-240-02;

Dear Mr. Suman Jr.:

At the regular meeting of the Santa Barbara County Planning Commission, on October 24, 1984, Commissioner Stillman moved that the Commission deny TPM 13,535 based upon staff's findings under sections 66473.5 and 66474(a)(c) and (f) as follows:

1. The proposed subdivision, together with the provisions for its design and improvement is inconsistent with the Comprehensive Plan policies because it is located in a floodway as shown on the Environmental Resources Management Element Maps; approximately 35% of the total area of Parcel A, 30% of Parcel B, 65% of Parcel C and 50% of Parcel D, fall within the 100 year flood plain of Alamo Pintado Creek; and Flood Hazard policy states that all development including construction...shall be prohibited in the floodway unless offsetting improvements in accordance with HUD regulations are provided;
2. The site is not physically suitable for the type of development; and
3. The design of the subdivision or the type of improvements is likely to cause serious public health problems.

Commissioner Wells seconded the motion and it carried by a vote of 5 to 0.

Action of the Commission is final unless appealed in writing to the Santa Barbara County Board of Supervisors within ten (10) days of the date of the action by the Commission.

13,535

George Suman Jr.
October 25, 1984
Page 2

If this decision is appealed, a filing fee of \$181 must be delivered to the Clerk of the Board in two separate checks payable to the County of Santa Barbara, one check for \$150 and the other for \$31.

Sincerely,



Charles L. King
Secretary to Planning Commission

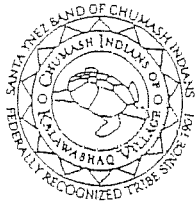
cc:

Deputy County Counsel, Jed Beebe
Transportation, Division of Public Works
Fire Department
Flood Department
Environmental Health Department
Public Works Department
Parks Department
Environmental Review Division
Comprehensive Plan Division
North County Zoning Administrator
Agent: Tom Hale, 385 Alisal Road, Solvang, CA 93463
Case File: TPM 13,535
Permanent File
S.B. County Surveyor

7211R

Santa Ynez Band of Chumash Indians

P.O. Box 517 • Santa Ynez, CA 93460
805-688-7997 • Fax 805-686-9578
www.santaynezchumash.org



BUSINESS COMMITTEE
Vincent Armenta, *Chairman*
Richard Gomez, *Vice Chairman*
Kenneth Kahn, *Secretary/Treasurer*
David D. Dominguez, *Committee Member*
Gary Pace, *Committee Member*

EXHIBIT A

Appeal of ZA Decision of March 28, 2007
Herthel Montanaro Lot Line Adjustment
5LLA-00000-00015
Documents submitted into Record by
Santa Ynez Band of Chumash Indians

September 25, 2006	SY Band of Chumash Indians Opposition Letter
December 16, 2006	Larry Spanne support letter
December 26, 2006	SY Band of Chumash Indians Opposition Letter to ND
January 17, 2007	Larry Spanne additional support letter
February 16, 2007	Dr. Michael Glassow, UCSB, support letter req ext Phase 1
March 20, 2007	Dr. Michael Glassow, UCSB, support letter, test pits
March 21, 2007	SY Band of Chumash Indians Opposition letter

Santa Ynez Band of Chumash Indians

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Gary Pace, *Committee Member*



September 25, 2006

Santa Barbara County Zoning Administrator
County Engineering Building
Planning Commission Room 17
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Opposition to
Herthel Montanaro Lot Line Adjustment
05LLA-00000-00015
Hearing Date: September 25, 2006 1:30 p.m.

To the Honorable Zoning Administrator of Santa Barbara County:

How does one begin to subdivide a historic 25 acre farm without having to go through the rigors prescribed under the Subdivision Map Act?

Answer: start with a series of lot line adjustments totaling less than four (4) parcels and argue that that there is no "net increase" in development potential.

That is exactly the case here with the Herthel Montanaro Farm supposed lot line adjustment. On the entire approximately 25-27 acres comprising the Montanaro Farm, the Farm House, Barn and commercial structure were sited on the southernmost portion of the property with the remaining northern portions placed in agricultural use. The House and Barn were functionally sited; not based on arbitrary lot lines. It is hard to believe that Mr. Herthel bought the Farm not knowing exactly where the lot lines bisected both the House and Barn.

Mr. Herthel complains that he cannot develop the three lots as the lot lines bisect the historic House and Barn. At the same time, Patricia Beltranena, as agent for Mr. Herthel, argues that the lot line adjustments will result in no net increase in development. This makes one want to ask why the lot lines are being adjusted at all except to initiate the defacto subdivision and development process.

I. Subdivision Map Act, Govt. Code 66421(d).

This section states that Lot Line Adjustments of parcels located within the Urban and Inner-Rural Areas as designated by the Santa Barbara County Comprehensive Plan that result in four (4) or fewer parcels shall be reviewed and approved by the zoning administrator.

Case No. 05LLA-00000-00015 involves 3 parcels.

The staff report also states on page three that there are two (2) additional pending Montanaro Farm lot line adjustments on APNs 135-200-004 and 135-180-007, north of the proposed lot line adjustment.

Therefore, by its own terms, there are a total of five (5) total parcels subject to lot line adjustments in violation of the maximum of four (4) parcel limit expressly stated in the Subdivision Map Act.

In other word, consolidating all Montanaro Farm lot line adjustments would require full compliance with the Subdivision Map Act.

II. CEQA Section 15305(a)

The terms of CEQA 15305(a) require:

- (1) Average slopes of less than 20%;
 - (2) No changes in land use or density, including, but not limited to, minor lot line adjustments. (Emphasis added.)
- (1) Average slopes of less than 20%

The Staff Report contains no analysis of the average slopes of any of the three existing lots or the three post lot line adjustment reconfigured lots.

However, Assessor's map Book 135-Page 24 has Alamo Pintado Creek running through the center of all three existing lots.

Failure to perform the slope analysis required by CEQA 15305(a) is a jurisdictional defect completely preventing CEQA exemption for the proposed lot line adjustment.

- (2) No changes in land use or density, including, but not limited to, minor lot line adjustments. (Emphasis added.)

Currently the entire Montanaro Farm is a consolidated entity comprised of between 25-27 acres. On such farm is located a Farm House, Barn and a commercial structure. All such structures are located in a group in the southern portion of the Farm. Such structures were never intended to be subdivided by the original owner and therefore such structures do not follow the current lot lines.

The current Herthel-Montanaro lot line adjustment seeks to sever all of the above structures from the historical Montanaro farm land. In addition, the lot line adjustment seeks to sever the Farm House from the other structures.

In the process, there will be created a new lot with a neighborhood commercial designation somehow that was transferred from bits and pieces of the other two lots.

In the middle of all of this is Alamo Pintado Creek.

It is inconceivable that breaking up a historical farm and severing its historical structures is a minor lot line adjustment.

III. Exceptions to Categorical Exclusion/Exceptions from CEQA

A categorical exclusion/CEQA exception is a creature of administrative convenience. As such, there are numerous situations that require the administrative agency NOT to apply such categorical exclusion/CEQA exception:

If the project is determined to be categorically exempt, the Agency must consider whether the exemption is negated by an exception pursuant to CEQA Guidelines, Section 15300, and Public Resources Code, Section 21084. Such exceptions may apply under the following circumstances:

- (a) The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.
 - (b) The project and successive projects of the same type in the same place will result in cumulative impacts;
 - (c) There are "unusual circumstances" creating the reasonable possibility of significant effects;
 - (d) The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within an officially designated scenic highway, except with respect to improvements required as mitigation for projects for which negative declarations or EIRs have been prepared;
 - (e) The project is located on a site that the Department of Toxic Substances Control and the Secretary of the Environmental Protection have identified, pursuant to Government Code section 65962.5, as being affected by hazardous wastes or clean-up problems; or
 - (f) The project may cause a substantial adverse change in the significance of an historical resource.
- (a) The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.

Previously, we have mentioned that Alamo Pintado Creek runs through the middle of the three lots that are the subject of lot line adjustment. The Los Olivos/Alamo Pintado Creek area is the location of one of the largest historical Chumash Villages: Soxtonokmu.

Kaylee Stallings McRae researched the history of Soxtonokmu in her Masters of Arts in Anthropology Thesis, Soxtonokmu (CA-SBA-167): An Analysis of Artifacts and Economic patterns From a Late Period Chumash Village in the Santa Ynez Valley (May 1999) (copies of the relevant pages of which are attached):

P. 26: Soxtonokmu was part of an intervillage network that includes Xonxon'ata and Kalawashaq';

P. 28: Soxtonokmu was near present day Los Olivos and Alamo Pintado Creek ran around the northern and western edges of the site;

P. 61: In a nearby archeological survey of Midland School, lithic scatter and archeological artifacts were found along Alamo Pintado Creek; and

P. 127: Soxtonokmu was located next to a perennial water source: Alamo Pintado Creek.

Alamo Pintado Creek was also the main source of water for Mission Santa Ines'. Mission Santa Ines' was established between Mission La Purissima and Mission Santa Barbara in 1804. To serve the Mission and to promote agricultural development around Mission Santa Ines' a series of underground aqueducts were created to divert water from Alamo Pintado Creek.

In 1819, Padre Francisco Xavier de la Concepcion Uria, selected a site along the banks of Alamo Pintado Creek for the construction of a grist mill (<http://www.sbthp.org/mills.htm>). Such grist mill and aqueduct become the 2003/2004 Santa Ynez Valley Union High School Project: Mission Santa Ines' Aqueduct Mapping, Dynamic GIS, History and Technology (Santa Ynez Valley news, Sept. 19, 2004, reprinted at <http://www.syvnews.com/articles/2005/04/15/news/local/news01.txt>).

(b) The project and successive projects of the same type in the same place will result in cumulative impacts;

Lisa Bodrogi, Agricultural land Use Planner, had the following comments on the Herthel Montanaro Lot Line Adjustment in her memo dated September 15, 2006 and attached as attachment D to the staff report:

[F]rom a big picture perspective, the entire Montanaro Property is comprised of approximately 25 acres made up of two (2) Assessor Parcels and a total of nine (9) Certificates of Compliance (CC). Whether the existing nine CC parcels are developed under this present configuration or under the proposed configuration, the development of nine residential lots ranging in size from 1-4 acres on these 25 acres will render the use of this property for any commercial operation as unusable.

(d) The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within an officially designated scenic highway, except with respect to improvements required as mitigation for projects for which negative declarations or EIRs have been prepared; and
(f) The project may cause a substantial adverse change in the significance of an historical resource.

It is a rare subdivision that refers to the property as the "historic" Montanaro Property but has never once been archeologically surveyed or had any of its structures evaluated by the State History Preservation Officer or the County.

In addition, without a doubt there are sites of historical and cultural significance of Chumash history along the Alamo Pintado Creek corridor within the three (3) parcels that are the subject of lot line adjustment.

As such, this is not a proper subject for categorical exclusion or CEQA exception.

IV. Rezoning and Tribal Consultation Pursuant to SB 18

Finally we are unclear as to the legality or mechanism for adjusting or shifting Neighborhood Commercial (CN) zoning between the three (3) lots.

Any rezoning is considered a Specific Plan Amendment pursuant to SB 18 as codified at Government Code, 65300, et seq.:

SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of both general plans (defined in Government Code Sec. 65300 et seq.) and specific plans (defined on Government Code Sec. 65450 et seq.). Although SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, existing state planning law requires local governments to use the same process for adoption or amendment of specific plans as for general plans (see Government Code Sec. 65453). Therefore, where SB 18 requires consultation and/or notice for a general plan adoption or amendment, the requirement extends also to a specific plan adoption or amendment. Although the new law took effect on January 1, 2005, several of its provisions regarding tribal consultation did not take effect until March 1, 2005.

State of California, Governor's Office of Planning and Research, Tribal Consultation Guidelines, Supplement to General Plan Guidelines (April 15, 2005), p. 3.

To date, there has been no formal request for consultation as required for any rezoning or "shifting" of zoning.

V. Conclusion

For the reasons given above, the Santa Ynez Band of Chumash Indians must object to 05LLA-00000-00015.

Sincerely,



Vincent Armenta,
Tribal Chairman

SOXTONOKMU' (CA-SBa-167): AN ANALYSIS OF ARTIFACTS AND
ECONOMIC PATTERNS FROM A LATE PERIOD CHUMASH
VILLAGE IN THE SANTA YNEZ VALLEY.

by

KAYLEE STALLINGS McRAE, B.A.

THESIS

Presented to the Graduate Faculty of
The University of Texas at San Antonio
in Partial Fulfillment
of the Requirements
for the Degree of

MASTER OF ARTS IN ANTHROPOLOGY

THE UNIVERSITY OF TEXAS AT SAN ANTONIO
College of Social and Behavioral Sciences
Division of Behavioral and Cultural Sciences
May 1999

the village population may have formed temporary camps to harvest acorns, pinyon nuts, or "point-specific" food resources (1981:147-148).

In describing the seasonal rounds of the base villages and seasonally occupied sites, Horne identified the archaeological determinates of these site types. He suggested base villages would have been located in reference to major trails and permanent water, close access to food resources, and in moderate winter weather locations. Archaeological evidence of a base village would include: a developed midden, evidence of architecture, evidence of a temescal (sweat lodge), storage facilities, dance floor, roasting pits, and a cemetery (Horne 1981:152-173). Seasonal occupation sites such as summer camps, acorn camps, and pinyon camps would all be marked by their accessibility to particular food resources. These site types may all be identified archaeologically through evidence of temporary shelter, clustering of occupational debris, storage facilities, patterns of reoccupation, small number of interments, and limited clustering of procurement (or task) related artifacts (Horne 1981:173-191).

The village site of *Hawamiw*, for which the seasonal round is described above, was part of the "Soxtonokmu' Network" identified by Horne (1981). Horne suggested that the Late period Chumash were regionally unified and had provinces in the inland region (1981:57). The integration of communities and regions in the inland area marked cultural change and increasing complexity. He stated:

Increased cultural complexity during the Late period is reflected by the existence of intercommunity craft specialists organizations and intervillage exchange of food, manufactured goods, and spouses. It is also reflected in the development of regional specialization, provincial unification, and ceremonial integration (Horne 1981:61).

Horne interpreted *Soxtonokmu'* as a capital of a province that included the villages of *Hawamiw* and *Heqep* (Horne 1981:57). Two things that made *Soxtonokmu'* an important village were: (1) a strategic location which gave control over major trade routes, and (2) a reliable source of water during dry climatic intervals (Horne 1981:58).

In determining the intervillage network of *Soxtonokmu'*, Horne reconstructed family relationships from information contained in mission baptismal registers. This ethnohistoric evidence provided information of marriage and kinship links between villages. For a village to be incorporated into the "Soxtonokmu' Network", Horne stated a village must have links with two other villages in the network, including *Soxtonokmu'* (Horne 1981:81). The villages in this network were: *Xorxon'ata*, *Kalawashaq'*, *Stuk*, *Hawamiw*, *Heqep*, *Tsiwikon*, *Kuyam*, *Sxaliwiliumu'*, and *Soxtonokmu'* (Horne 1981:81-82; see Figure 11.1 for kinship links). Horne proposed that such "intervillage networks were expressions of economic, social, and political interdependencies" (1981:82).

The models used in examining inland adaptations and interactions suggest that the environment played a crucial role in inland settlement and economics. As stated by Kelly (1995; see Chapter 2), a

Chapter 5

Natural and Cultural Setting

The Historic village site of *Soxtonokmu'* (CA-SBa-167) is located near the present day town of Los Olivos, California, in the Santa Ynez Valley. The site is approximately 32 km inland from the Santa Barbara Coast. The following is a description of *Soxtonokmu'* and the region occupied by Chumash peoples.

Location

The site of *Soxtonokmu'* (CA-SBa-167) is located on a series of alluvial terraces above Alamo Pintado Creek in Birabent Canyon. Alamo Pintado Creek runs around the northern and western edges of the habitation area of the site. This creek flows perennially to the southwest, meeting the Santa Ynez River approximately eight miles downstream. The site area encompasses approximately 72,774 m² with dimensions of about 91 meters east-west and 122 meters north-south. Site elevation is approximately 451 meters. Areas previously excavated indicate that the midden reaches a depth of 1.5 meters.

Geography

The territory inhabited by Chumash peoples covered some 7,000 square miles and encompassed over 200 miles of coastline. This region includes what is now known as Santa Barbara County, San Luis Obispo County, and portions Ventura, Kern, and Los Angeles Counties (see Figure 5.1). One Chumash group occupied an archipelago of islands in the Santa Barbara Channel: San Miguel (*Tuqan*), Santa Rosa (*Wimal*), Santa Cruz (*Limuw*), and Anacapa (*'Anyapax*) (see Figure 1.1). The four islands are called the Northern Channel Islands. The name *chumash*, originally meaning 'islander', has become synonymous with the culture that flourished through the Santa Barbara region.

Geology

In Santa Barbara County, the southeast-trending Coast Ranges meet the east-trending Transverse Ranges. The village site of *Soxtonokmu'* (CA-SBa-167) is nestled against the San Rafael Mountains (which are part of the South Coast Ranges) west of the Santa Ynez Mountain Ranges (which are part of the westernmost of the Transverse Ranges) (see Figure 5.2). The lowland area between the San Rafael and Santa Ynez Mountains consists of low ranges of hills that separate valleys. One of the largest valleys in this area is the Santa Ynez Valley. The South Coast Ranges contain Mesozoic sediments. Folding and faulting of these ranges have created smaller independent ranges and valleys. Most geologic formations in the Santa Barbara region are sedimentary and a few are volcanic (Smith 1998). Geologic assemblages of this region

serpentine boulders southeast and south of the main habitational portion of the site. Lee reported that the cupules are randomly spaced and vary in size. The average diameter of the cupules is 2.5 cm. Incised grooves form X's and V's, crosses, parallel lines, and radiating lines (Lee 1981). Lee numbered the large rocks 1 - 3 from north to south (see Figure 8.1). Rock 1 measures 90 by 150 cm and 90 cm at the maximum height. The rock contains ca. 128 cupules and has grooves. Rock 2 measures 94 by 89 by 120 cm, with a total height of 110 cm. Rock 2 has a total of 54 cupules and also has grooves. An incised anthropomorphic figure appears on the west side of the rock that measures 5.2 by 2.3 cm (Lee 1981).

Lee described the pecked ovoid petroglyphs located on a serpentine boulder near the creek and southwest of the habitational portion of the site. Rock 3 measures 90 by 80 cm. Lee indicated the ovoids have raised central portions formed through pecking and abrasion of the surrounding area (1981). Many of the raised portions of the ovoids range from 1.5 to 3.2 cm in height, with the largest oval measuring 32 by 23 cm. The ovoids resemble "doughnut figures," while some are open ended in the shape of a "horseshoe" (Lee 1981:124). Donna Gillette from California State University, Hayward, is currently writing her thesis on the occurrence of ovoids throughout California, including those found at village site of *Saxtonokmu'*.

Other studies of artifact types at *Saxtonokmu'* include the work of John Johnson and Brian Glenn. In the 1970s, Johnson analyzed fish bone and projectile points from *Saxtonokmu'* (n.d. ^{LC} ~~c~~). His notecards for fish bone identifications may be found in the UCSB file folders for CA-SBa-167. Johnson's unpublished manuscript on a projectile point study which includes *Saxtonokmu'* is on file at the UCSB anthropology collections repository and at the Santa Barbara Museum of Natural History (Johnson 1979).

Later, Glenn wrote a manuscript that included an analysis of some of the projectile points from the site (1987). Projectile points pulled from this collection represented those from dated components. As mentioned by McIntosh, there are over 100 projectile points in the entire collection. Only 41 projectile points from *Saxtonokmu'* were selected for use in Glenn's morphological classification system for projectile points from sites in the Santa Barbara region. Glenn classified the projectile points from *Saxtonokmu'* as the following: non-serrated triangular, straight base (4); non-serrated triangular, concave base (23); serrated triangular (1); leaf-shaped (3); rhomboid (1); bipointed (1); hipped (1); and contracting tang (2) (Glenn 1987). Out of the 41 projectile points, a total of five projectile points were not accounted for in Glenn's analysis.

The latest archaeological information regarding the land around *Saxtonokmu'* is contained in a survey report written by Dustin Kay and Karin Anderson (1997). A general reconnaissance survey was done by Science Applications International Corporation (SAIC) for proposed improvements at Midland School. The survey was completed within 1 mile of a proposed construction site. Although CA-SBa-167 exceeds this distance, a lithic scatter and associated artifacts were found along Alamo Pintado Creek, 1.5 miles away from the impact area. The number for this site is CA-SBa-2655. No potentially significant cultural resources were found in the proposed project area. CA-SBa-167 is located well north of the area surveyed.

Several factors were considered in the identification of economic patterns at *Soxtonokmu'*. Variables which could have affected the frequencies of trade goods at the site were: (1) site population, (2) site location, and (3) kinship links to other villages regionally. Much information has been ethnohistorically recorded concerning these variables.

The only records which mention the site population at *Soxtonokmu'* are documented by Pablo Cota and Friar Estevan Tapis in 1798 (see Chapter 6). From these documents the distance of *Soxtonokmu'* from Mission Santa Inés and the population of the village before missionization are known: 168 people counted by Cota and 200 people estimated by Tapis based on count of 50 structures. In a regional comparison of site populations at the time of European contact, *Soxtonokmu'* was the largest village in the Santa Ynez Valley. Population for villages has also been figured by calculating baptisms in the mission registers from various missions. Based on baptismal records, the village of *Soxtonokmu'* had a population of 157 near the time of the site's abandonment in 1804 (Johnson 1988:101).

The sites location was also an important variable to consider. The site was located next to a perennial water source, the Alamo Pintado Creek. Additionally, the village was located on two major trading routes for the inland region. One trade route went further inland on a prehistoric trail along Zaca Creek, Foxen Creek, and the Sisquoc River en route to the village sites of *Siswow* or *Washlayik*. The other trade route was along Lisque Creek and continued toward the coast by way of the villages '*Aqitsu'm*', *Kalawashaq'*, and *Qasil*.

Much information is also known of the social relationships that *Soxtonokmu'* maintained regionally with other villages. Through examination of mission registers (e.g., baptismal records), a reconstruction of this social sphere was made possible (Horne 1981; Johnson 1988, n.d. a; see also Appendix A). Figure 11.1 depicts the kinship links of *Soxtonokmu'* geographically. As part of the adaptational response to the variability of resources in the inland region, *Soxtonokmu'* relied on kinship links to areas which varied in resources (see also Johnson 1988, 1999). Interestingly, there were many kinship and marriage links between *Soxtonokmu'* and villages on the coast.

In examining the quantitative data from *Soxtonokmu'* other variables were also considered. These variables were based on network variables presented by Plog (1977; see Chapter 9). The variables were incorporated into the analysis of the trade goods from the site and used to identify site and intersite economic patterns. His approach is one of the few which permits quantification of trade using an incomplete or small database.

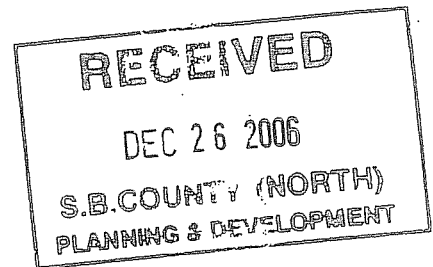
The economic variables used in this analysis were: content, diversity, size, magnitude, temporal duration, directionality, symmetry, centralization, and complexity of the economic network. The use of these variables has been discussed in Chapter 9, while the application of these variables in relation to the *Soxtonokmu'* data was discussed under the results section of Chapter 11. These results are summarized below.

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December 16, 2006

Shelly Ingram
Development Review Division
Planning and Development Department
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101-2058



Subject: Independent Expert Comment Letter Relative to County of Santa Barbara Planning and Development Department's Initial Study/Negative Declaration 06NGD-00000-00029, Herthel-Montanaro Lot Line Adjustment: 05LLA-00000-00015, December 1, 2006

Dear Ms. Ingram:

This expert comment letter on the subject Initial Study/Negative Declaration focuses on the related cultural resources impacts and mitigation. My qualifications as an expert include 38 years of professional cultural resources experience in the County of Santa Barbara and 23 years as Cultural Resource Manager and Chief of Cultural Resources at Vandenberg Air Force Base.

First, with regard to the sensitivity of the project area and potential impacts, I agree that the general vicinity of the project is sensitive for archaeological resources. However, I am also of the opinion that the project site itself must be considered potentially sensitive from an archaeological, religious, and ceremonial standpoint, until demonstrated otherwise. A prehistoric Chumash cemetery, CA-SBA-188, is recorded in close proximity to the project area, yet its precise location is unknown. My own handwritten notation from 1968 at the top of the site record indicates "location on map appx" (approximate). I made this notation at UCLA when I was employed in transferring map and record information to the UCSB Information Center. To my knowledge, the cemetery location has never been field checked since it was recorded by Orr (1947). The site record is also unclear as to cemetery location except to note that it is "1/2 mile south of flag pole center of Los Olivos, left side of road on creek bank, approximately 100 yards from road..." The road in question is not named, nor is the direction the recorder was facing when indicating "left side of road." The distance from the flag pole may also be approximate. Therefore, we are faced with a situation in which the cemetery could be on either side of Alamo Pintado Creek at somewhat greater or lesser distance than 1/2 mile from the "flagpole," and it could easily fall within or very near the project.

The project area itself has not been subjected to a complete archaeological survey. By my calculation, a 1984 survey by County Archaeologist, David Stone, would have covered only the southernmost portion of the current project area. The northern portion, which is apparently most proximate to SBA-188, has not been surveyed. Furthermore, prehistoric Chumash cemeteries are consistently located within or directly adjacent to residential sites or villages. Therefore, it is logical to conclude that the archaeological

remains of a village site are associated with SBA-188 and extend out an unknown distance and direction from its location. Both prehistoric cemeteries and associated village remains are generally regarded as among the most significant or important of archaeological resources. These archaeological deposits may or may not be visible at the ground surface, and could have easily been buried in the floodplain deposits of Alamo Pintado Creek beneath the cultivated zone. Applegate (1975), in his Index of Chumash Placenames, identifies *Shahsh'ilik*, the Inezeno Chumash name for "bog or swamp", as being a place near Los Olivos. One would expect to find such a place along the floodplain of Alamo Pintado Creek and because placenames often refer to village locations, it could very well refer to a village associated with SBA-188. Given the above circumstances, there is, in my opinion, a moderately high probability that future development of the project area will impact very important archaeological as well as Chumash heritage resources.

I also find the proposed mitigation to be insufficient to prevent significant impacts to cultural resources that could be present on the subject property. First, the mitigation apparently depends on construction personnel to recognize important cultural resources and take the initiative in halting or redirecting equipment. Much damage to an important cultural resource can, and often does occur during construction before the resource is recognized, if it is even recognized or acknowledged at all. A construction shutdown in order to evaluate the resource and design as well as perform a Phase 3 mitigation can be expensive and time consuming. A project redesign to avoid a highly sensitive resource would also add to the woes and financial burden of the developer.

There is a relative quick and inexpensive remedy that can answer lingering questions about resources within the project area and avoid pitfalls for the developer as well as other interested parties. This remedy involves completing a Phase 1 surface investigation of the project area supplemented by limited subsurface investigations to demonstrate the presence or absence of buried cultural resources. The subsurface investigations might employ a limited number of auger borings and/or small backhoe trenches in the northernmost part of the project area where extensions of the SBA-188 cemetery and/or an associated village site might be present. The information gained from these investigations could then be used both to avoid significant impacts to any extant resources and shield the developer from future construction delays and excessive costs related to mitigation and possible project redesign. I strongly recommend Phase 1 surface and subsurface surveys be required as conditions of project approval that should be viewed favorably by the applicants as well as all interested parties.

This concludes my commentary and recommendations. If you have any questions or require additional information, please do not hesitate to contact me.

Yours sincerely,



Laurence W. Spanne, MA
Cultural Resources Consultant

Santa Ynez Band of Chumash Indians

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December 26, 2006

Santa Barbara County Zoning Administrator
County Engineering Building
Planning Commission Room 17
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Draft Initial Study/Negative Declaration 06NGD-00000-00029
Herthel-Montanaro Lot Line Adjustment: 05LLA-00000-00015
December 1, 2006

To the Honorable Zoning Administrator:

The Santa Ynez Band of Chumash Indians respectfully objects to the above Draft Initial Study/Negative Declaration as follows:

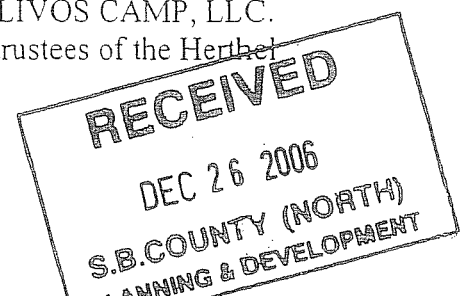
Subdivision Violation for the 2 projects:

Before starting the Lot Line Adjustment (LLA) for the Southern part of the Montanaro Farm ("Farm"), the Herthels started a LLA for the Northern portion of the Farm. The Northern Farm (05LLA-16) is separated by two lots from the Southern Farm (05LLA-15). The report repeated states that 05LLA-16 is "separate and distinct" from 05LLA-15 because of the 2 lot separation. This completely ignores the purchase of all 4 lots simultaneously as a single property by a single buyer who then started subdividing the Northern Farm and Southern Farm simultaneously.

On August 4, 2003, and recorded as document 2003-0111846 on August 18, 2003, Janice Yates as the Trustee of the Arthur Montanaro Trust conveyed all of the lands in 05LLA-16, 05LLA-15 and all of the parcels in between to Douglas J. Herthel and Susan J. Herthel as trustees of the Herthel Revocable Living Trust dated March 1, 1988. (Exhibit A). The Arthur Montanaro Trust also took back a deed of trust on the same property that same day. (Exhibit B).

Just prior to filing the 05LLA-16 lot line adjustment, the Herthel Revocable Living Trust conveyed those parcels to a new limited liability company, LOS OLIVOS CAMP, LLC. The new LLC was established by Douglas and Susan Herthel, the trustees of the Herthel Revocable Living Trust. (Exhibits C & D).

Objection of Santa Ynez Band of Chumash Indians
Draft Initial Study/Negative Declaration 06NGD-00000-00029
Herthel-Montanaro Lot Line Adjustment: 05LLA-00000-00015



These are all the same people. 05LLA-16 is a proposed 4 parcel lot line adjustment. 05LLA-15 is another proposed 4 parcel lot line adjustment. The same "people" own all of the property between 05LLA-16 and 05LLA-15 which they purchased at the same time.

Is the Subdivision Act so easily circumvented?

Failure to consider cumulative impacts

Page 6, MONITORING, Cumulative Impact, states that "In total, the "Montanaro Property" is comprised of nine legal parcels, each of which could be developed under existing zoning requirements." However, the cumulative impact analysis only covers the Northern Farm (05LLA-16) and the Southern Farm (05LLA-15). What about the other 7 developable parcels in between? What about neighboring parcels in and surrounding Los Olivos?? This is quite a narrow view of cumulative impact.

Exiting and Historic Land Use: The Study completely ignores the historic nature of the Montanaro Farm and the Old Store and Meat Market. Instead the Report states: "Parcels 1 and 3 contain considerable development in the form of residences or agricultural buildings affording them a score of 2 points [out of 10]." Certainly that is understatement. The Report needs to include the research on the Montanaro Store and Meat Market which states that the structure is eligible for consideration for inclusion on the National Register of Historic Places. See Julia Costello 1981 –Los Olivos Market: Initial Impact Assessment of Montanaro property, historical overview of farming operation, buildings, setting, meat cooler on creek.

Page 17: Setting: Physical: The Report recognizes that "a known cultural site is located on a parcel within ¼ mile of the proposed project site." Again, this is understatement. A known cemetery is located within a ¼ mile of the project site meaning that a village has to be nearby (the village supplies the dead people which the villagers would prefer just outside of town). In addition, documentation has been provided that Alamo Pintado Creek which is the western boundary of the Farm was a trail for trade and travel from the large Chumash village of *Soxtonokmu* just north of Los Olivos and the Coastal Chumash villages. Therefore, the entire Farm is more than likely rich in unexplored artifacts, and the buildings and unfarmed open space on the Southern Farm (05LLA-16) is definitely covered in cultural resources.

Page 17: Setting: Regulatory: The Report recognizes that a cultural resource survey needs to be done not only when a known cultural site is located on the property but also when "there is a high potential for ... presence" of cultural resources:

“The County’s Cultural Resources Guidelines, in the Environmental Thresholds and Guidelines Manual provides, in part, for the following:

As part of the environmental review process, archeological site maps are reviewed to determine if a recorded cultural resource is located within the project site or whether there us a high potential for its presence onsite based on recorded site distribution patterns or historical accounts. If this determination is positive and the project site is not developed, a Phase I archaeological investigation including a systematic inspection of the ground surface is carried out by Planning and Development staff or a County approved professional Archaeologist, and sub-surface testing to define the presence of archaeological artifacts or site boundaries when vegetation obscures ground visibility.” (Emphasis added.)

This is not a “surprise find” per CEQA Appendix K as cited on Page 18 of the report. It would more surprising NOT to find cultural resources on the same creek as the cemetery less than ¼ mile away. The entire Farm is an integral part of Chumash heritage and deserves a complete cultural resource survey under the careful supervision of Chumash Native Monitors. Regrading the Southern Farm with a realigned road and new septic with the hollow promise that “Construction shall cease in the area of the find but may continue on other parts of the building site” is a license to bury and destroy Chumash history one more time.


The Contradiction of No Increase in Development and Reconfiguring the Lot Lines to Create Development Parcels

05LLA-16 currently at best is configured as two developable lots: the internal line of lots and the surrounding “u” of lots. Reconfiguring the lot lines to create 4 equal lots means that the you have doubled the amount of actually developable lots. (Exhibit E).

05LLA-15 currently at best is configured at two developable lots: the combined farm house store and barn and the remaining undeveloped commercial corner. Reconfiguring the lot lines creates created at least 4 saleable lots: the farmhouse, the store, the barn and the reconfigured commercial corner. The owner makes no representations as to maintaining the integrity of any of the historic store, barn or farmhouse. (Exhibit F).

Arguing that there is no increase in development is disingenuous at best.

Sincerely,



Vincent P. Armenta,
Tribal Chairman

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January 17, 2007

Shelly Ingram
Development Review Division
Planning and Development Department
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93106-2058

Subject: Additional Independent Expert Comments on Planning and Development Department's Staff Memorandum dated January 5, 2007 with Reference to Negative Declaration 06NGD-00000-00029, Herthel-Montanaro Lot Line Adjustment: 05LLA-00000-00015

Dear Ms. Ingram:

I am hereby providing you with a few additional comments regarding the subject Herthel-Montanaro Project. It is my understanding that comments may be submitted up to three days prior to a hearing.

First, I call your attention to Section 4.5, Impact Discussion. Here it is stated: "However, the site is not recorded as being of religious or ceremonial significance." I understand the site referenced is SBA-188, the cemetery location. While this statement is essentially true, it does not take into account that the site was recorded sometime between 1947, when Phil Orr visited the location, and 1968 when I examined and annotated the record to indicate the site location was only approximate. There were no statutory or other requirements in existence at that time to address religious or ceremonial significance. Only archaeological data was recorded. The need to address religious and ceremonial values subsequently came into existence after 1968 in the form of CEQA and other authorities. Certainly today, any such site that contains a cemetery holds religious, if not ceremonial significance for related Native Americans such as the Santa Ynez Band of Chumash Indians in this case. I would advise the above quoted statement be stricken from the document and replaced by one more closely reflecting the value of the site to contemporary Native Americans.

Next, I have some recommendations regarding the proposed, extended Phase 1 Investigation. Normally this would initially proceed in the field with an intensive surface survey of the project area. I previously communicated to you that this initial work should include an examination of the upper banks of Alamo Pintado Creek. If necessary, leaf litter should be removed and the

bank minimally scraped with a shovel or trowel at a limited number of locations in order to facilitate examination for buried cultural remains. No mapping of the soil profile is suggested. As I explained previously, this quick and inexpensive procedure is a fairly standard part of Phase 1 Investigations, particularly in instances where buried sites not visible at the ground surface might be present.

Shovel tests can also be employed to detect buried cultural deposits, although they are limited to probing only about 3 to 4 feet in depth. Very small backhoe excavations allow for direct examination of the soil profile for cultural materials at greater depth, and so are preferable in situations like this. In Section 10.2, Mitigation Measures for Cultural Resources, it is stated: "Backhoes may be used but resulting materials must be waterscreened through 1/8 inch mesh." Normally, the way backhoe testing is conducted allows for excavation of a pit to allow investigators access to the soil profile or any cultural deposit exposed during excavation. Once cultural remains are encountered, backhoe excavation is halted and soil samples are extracted by hand. These samples are then subjected to waterscreening. Waterscreening of all soil extracted by the backhoe would, in my opinion, be extremely expensive and not very productive. Instead, the typical and preferred procedure would involve slow and careful backhoe excavation directed by an archaeologist and Chumash monitor. This team would continuously examine soil removed and halt mechanical excavation if cultural material were observed.

Finally, I would recommend that all field activities associated with the Phase 1 Investigation include local Chumash monitors, preferably from the Federally Recognized Santa Ynez Band. Although the County does not normally involve Native Americans in Phase 1 Investigations, this particular project includes subsurface investigations in a highly sensitive area—conditions that usually do require involvement of Chumash monitors in Santa Barbara County.

This concludes my comments. I hope you will give them careful consideration. I strongly urge you to incorporate them in the subject document. If you have any questions or require additional information, please contact me.

Yours sincerely,

Signed

Laurence W. Spanne



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SANTA BARBARA, CALIFORNIA 93106-3210

16 February 2007

Shelly Ingram
Development Review Division
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123 East Anapamu Street
Santa Barbara, CA 93101-2058

RE: Proposed Mitigated Negative Declaration 06NDG-00000-00029, Herthel-Montanaro Lot Line Adjustment

Dear Ms. Ingram:

At the request of the Santa Ynez Band of Chumash Indians, I am providing comments regarding the negative declaration mentioned above and the two letters written by archaeologist Larry Spanne in which he recommends that an extended Phase 1 archaeological investigation take place before decisions are made regarding the lot line adjustment.

As Larry points out, archaeological site CA-SBA-188, specifically a prehistoric cemetery, is known to be present within or near the properties in question. The cemetery was visited by an archaeologist in 1947, and a small collection was made at that time, which is now housed at the Santa Barbara Museum of Natural History. Information about the location of the cemetery is vague, however, and as a consequence the site record housed in the Central Coast Information Center indicates that the site is only approximately located.

The small collection at the Santa Barbara Museum of Natural History reveals that the cemetery was in use during a period of prehistory about which comparatively little is yet known, dating between about 1300 and 900 years ago. The cemetery surely is associated with a habitation site, which either incorporates the cemetery within its area or is adjacent to it.

Larry's recommendations regarding the nature of an extended Phase 1 archaeological investigation (on page 2 of his 16 December letter and in more detail in his 17 January letter) would be an appropriate way to determine whether an archaeological site is present. I support his recommendations.

I should add that any land-use action that has the potential to affect directly or indirectly areas where prehistoric peoples are likely to have lived should be subject to a

Phase 1 investigation as a matter of course. Lands adjacent to major watercourses such as Alamo Pintado Creek obviously fall into this category. Indeed, ethnohistoric information reveals that lands adjacent to Alamo Pintado Creek were particularly sensitive to the Chumash people during the early historic period, and this significance undoubtedly extended back into prehistoric times.

Sincerely,

Michael A. Glassow
Professor

cc. Santa Ynez Band of Chumash Indians

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SANTA BARBARA, CALIFORNIA 93106-3210

20 March 2007

Santa Barbara County Zoning Administrator
County Engineering Building
Planning Commission Room 17
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Draft Initial Study/Negative Declaration 06NGD-00000-00029
Herthel-Montanaro Lot Line Adjustment: 05LLA-00000-00015
Rescheduled Hearing: March 26, 2007

Dear Zoning Administrator:

In light of the prospect that an important prehistoric archaeological site may be located on the Herthel property, I agree with the logic that testing should be done at the earliest possible point in the planning process. In other words, now is time to perform archaeological testing on the parcel.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Glassow".

Michael A. Glassow
Professor

RECEIVED
MAR 21 2007
S.B. COUNTY
PLANNING & DEVELOPMENT

Santa Ynez Band of Chumash Indians

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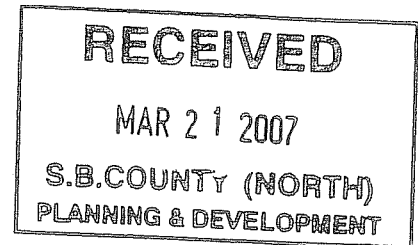
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Gary Pace, *Committee Member*



March 21, 2007

Santa Barbara County Zoning Administrator
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Santa Barbara, CA 93101



RE: Draft Initial Study/Negative Declaration 06NGD-00000-00029
Herthel-Montanaro Lot Line Adjustment: 05LLA-00000-00015
Rescheduled Hearing: March 26, 2007

To the Honorable Zoning Administrator:

This response incorporates by reference all communications by the Tribe prior to this dated, including without limitation, that response letter dated December 26, 2006.

1. Any delays are due to the Failure of Applicant and Planning to Identify SBA-188

The Tribe had no choice but to intervene in this project when the first draft report was an environmental categorical exclusion that did not even mention the Native American cemetery definitely next door and possibly on the project site (SBA-188). The Tribe has expended great time and resources to bring the project where it is today.

2. Any delays are due to the Failure of Applicant and Planning to Combine 5LLA-15 and 5LLA-16

The current report finally at least does a cumulative impact analysis on 5LLA-15 (the farm houses) with 5LLA-16 (the northern farmland subdivision into 4 residential lots) none of which were included in the first report. However, the Tribe has expended great time and resources to research the history of the Montanaro Farm as a historic unified whole and the purchase of the Farm by the Herthels as a unified whole.

3. This May Not be a Zoning Administrator (ZA) Case and Is an Illegal Subdivision

Planning takes the position that the ZA is the appropriate decision-maker for this project pursuant to the provision in Chapter 21, Section 21-6.a.3, regarding Lot Line Adjustments in the Urban and Rural areas that result in four or fewer parcels (p.8) as the project 05LLA-15 reconfigures the boundaries between four legal lots.

Before starting the Lot Line Adjustment (LLA) for the Southern part of the Montanaro Farm ("Farm"), the Herthels started a LLA for the Northern portion of the Farm. The Northern Farm (05LLA-16) is separated by two lots from the Southern Farm (05LLA-15). The report repeated states that 05LLA-16 is "separate and distinct" from 05LLA-15 because of the 2 lot separation. This completely ignores the purchase of all 4 lots simultaneously as a single property by a single buyer who then started subdividing the Northern Farm and Southern Farm simultaneously.

On August 4, 2003, and recorded as document 2003-0111846 on August 18, 2003, Janice Yates as the Trustee of the Arthur Montanaro Trust conveyed all of the lands in 05LLA-16, 05LLA-15 and all of the parcels in between to Douglas J. Herthel and Susan J. Herthel as trustees of the Herthel Revocable Living Trust dated March 1, 1988. The Arthur Montanaro Trust also took back a deed of trust on the same property that same day.

Just prior to filing the 05LLA-16 lot line adjustment, the Herthel Revocable Living Trust conveyed those parcels to a new limited liability company, LOS OLIVOS CAMP, LLC. The new LLC was established by Douglas and Susan Herthel, the trustees of the Herthel Revocable Living Trust.

These are all the same people. 05LLA-16 is a proposed 4 parcel lot line adjustment. 05LLA-15 is another proposed 4 parcel lot line adjustment. The same "people" own all of the property between 05LLA-16 and 05LLA-15 which they purchased at the same time.

If Chapter 21, Section 21-6.a.3, regarding Lot Line Adjustments in the Urban and Rural areas that result in four or fewer parcels does not apply then the Planning Commission is the proper decision-maker. Ch.21(Subdivision Regulations) of the County Code, Sec.21-6 says that *The Santa Barbara County Planning Commission shall be the decision-maker, except that the Zoning Administrator shall be the decision-maker for the following: (1) Tentative Parcel Maps that are determined by the County to be exempt from environmental review.*

4. *If all Archeologists agree that subsurface testing is required, then the law is clear that such testing must be completed BEFORE the LLA is issued.*

We appreciate all the work that County Planning has put into the revised report. However, the Tribe cannot agree to defer the test pits until a later date after the approval of the LLA. There seems to be some precedent against such deferral:

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).

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“By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. (See Pub.Resources Code § 21003.1; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d 68, 84, 118 Cal.Rptr. 34, 529 P.2d 66.) In *Bozung v. Local Agency Formation Com.*, *supra*, 13 Cal.3d 263, 282, 118 Cal.Rptr. 249, 529 P.2d 1017, the Supreme Court approved “the principle that the environmental impact should be assessed as early as possible in government planning.” Environmental problems should be considered at a point in the planning process “where genuine flexibility remains.” (*Mount Sutro Defense Committee v. Regents of University of California*, *supra*, 77 Cal.App.3d 20, 34, 143 Cal.Rptr. 365.) A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. (Id. at p. 35, 143 Cal.Rptr. 365; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d 68, 81, 118 Cal.Rptr. 34, 529 P.2d 66; *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695, 706, 104 Cal.Rptr. 197.)”+

5. *There is No Post Lot Line Adjustment Mitigation Plan*

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. We already know that the 5LLA-15 three lots will have a new ingress/egress easement. Such easement will require some form of grading and possibly compacting/paving. The current common septic system will also need to be severed. Finally, the new concentrated commercially zoned parcel is individually larger than the prior multiple commercially zoned parcels prior to lot line adjustment unification. All of this development will need its own post mitigation plan to avoid impacts if possible to sites and objects of cultural significance. *Citizens of Goleta Valley v. Bd. Of Supervisors*, 197 Cal.App.2d 1167, 1186 (1988).

6. *Where is the Carbone Survey Supposedly Finished in February*

Supposedly Larry Carbone of Western Points Archeology did a surface survey of the entire Montanaro in February 2007. To date the Tribe has not received a copy. The Carbone survey is not even a listed attachment to the Planning Memos to the ZA dated March 15, 2007.

Sincerely,



Vincent Armenta,
Tribal Chairman

From: Sam Cohen [mailto:scohen@santaynezchumash.org]
Sent: Tuesday, February 20, 2007 10:04 AM
To: Karamitsos, John
Cc: Kathy Conti
Subject: FW: Status of Herthel 5LLA15

John: As of today we have still not received any additional documents from Mr. Herthel or his agents. Please be advised that we have had the work by Larry Spanne reviewed by Professor Michael Glassow at the Museum of Natural History and you should receive that letter this week. Prof. Glassow confirms that an extended Phase I with test pits should take place.

For the record, we are not the ones failing to disclose any information.

Sam Cohen

Mr. Karamitsos replied on February 22, 2007:

From: Karamitsos, John [mailto:Johnk@co.santa-barbara.ca.us]
Sent: Tuesday, February 20, 2007 10:31 AM
To: Sam Cohen
Cc: Kathy Conti
Subject: RE: Status of Herthel 5LLA15

Hi Sam - Thanks for your message. I need to finalize my ZA Memo for next week's meeting and have not yet received any additional input. Thanks again - John

Finally Mr. Karamitsos wrote this on February 22, 2007:

Hi Sam - We're continuing the item. I'll let you know when the continuance date is identified and will ensure that you receive a copy of all submitted materials. I'm waiting on the applicant's consulting archaeologist report/letter. Thanks - John