

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

RECEIVED

2011 MAR 17 PM 2:10

March 17, 2011
CITY OF SANTA BARBARA
CITY CLERK'S OFFICE

VIA HAND DELIVERY
 Santa Barbara City Council
 Santa Barbara City Clerk's Office, City Hall
 735 Anacapa Street
 Santa Barbara, California 93101

RE: Appeal of Planning Commission Decision on March 10, 2011
Application # MST2010-00186
1233 Mission Ridge Road

Dear City Clerk,

This office represents Judy and David Denenholz who hereby appeal the Planning Commission's March 10, 2011 decision upholding the issuance of a Performance Standard Permit and authorizing a second dwelling unit as part of a proposed residential project located on the private Green Ridge Lane in Santa Barbara's upper Riviera neighborhood but with a street address of 1233 Mission Ridge Road ("Project"). We challenge all aspects of this approval, including the sufficiency of the evidence, the adequacy of the findings, CEQA compliance, and Brown Act compliance.

We are filing this appeal to preserve our right of review but do not expect or desire that this matter will be calendared until the Single Family Design Board process is complete and we have adequate time to submit supplemental appeal documents and prepare for the hearing itself. The project is scheduled to go before the SFDB on March 28, 2011. Please see Danny Kato's email attached assuring that all appeals to the City Council, including the Additional Dwelling Unit PSP and SFDB Project Design approval will be heard in a single City Council hearing. This appeal is a "placeholder" filed to preserve review rights at minimum cost while other proceedings occur and disputed issues may be resolved or narrowed. Mr. Kato has provided further assurances that we will have "ample time" to prepare for a council hearing, should that become necessary.

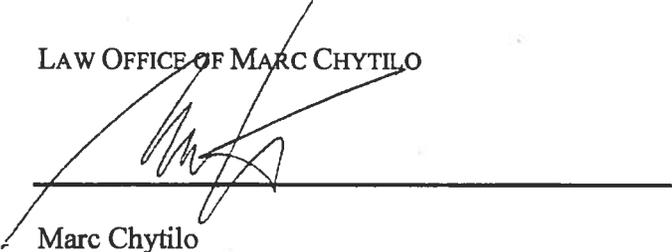
The grounds for this appeal are summarily stated by reference to prior letters filed in this matter, including: 1) Letter to the Staff Hearing Officer, January 21, 2011; 2) Planning Commission Appeal letter, February 7, 2011; 3) Planning Commission Supplemental Appeal letter, March 3, 2011; and 4) Letter to Steve Wiley, March 9, 2011. We reserve the right to add issues, evidence and argument to supplement this appeal.

LAW OFFICE OF MARC CHYTILO
 P.O. Box 92233 • Santa Barbara, California 93190
 Phone: (805) 682-0585 • Fax: (805) 682-2379
 Email(s): airlaw5@cox.net (Marc); anacitrin@cox.net (Ana)

City Clerk
March 17, 2011
Page 2

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo

Enclosures: Email from Danny Kato, March 10, 2011
Letter from M. Chytilo to SHO, January 21, 2011
Appeal letter from M. Chytilo to Planning Commission, February 7, 2011
Supplemental appeal letter from M. Chytilo to Planning Commission, March 3,
2011
Letter, Marc Chytilo to Steve Wiley, March 9, 2011

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

January 21, 2011

Ms. Susan Reardon, Staff Hearing Officer
Community Development Department
Planning Division
P.O. Box 1990
Santa Barbara, CA 93102-1990

By Hand Delivery

RE: Application # MST2010-00186
1233 Mission Ridge Road

Dear Ms. Reardon,

This letter is submitted on behalf of my clients Judy and David Denenholtz in regard to the proposed project located at 1233 Mission Ridge Road ("Project"). The Denenholtzs are homeowners near the Project and are concerned about several aspects of the Project including the size, bulk and scale of the project; the Project's blockage of views from homes, streets, and open space areas of the Ocean and City; safety issues surrounding emergency vehicle access based on past experience; and the City's compliance with CEQA. A number of other neighbors have expressed strong reservations about the project and appeared in opposition before the Single Family Design Board (SFDB).

1. The Good Neighbor Process Has Not Been Employed and Neighbors Need Complete Project Information to Ensure Their Interests Are Addressed

As explained to the applicant and the SFDB, the neighbors on Green Ridge Lane are troubled by the size of the structures and site intensification with the addition of a full second house on the lot. The SFDB agreed that the initial proposal was far too large for the neighborhood and site, and some reductions were made. The neighbors remain skeptical, particularly concerning specific view corridors, including views to Chase Palm Park and the waterfront, and asked the applicant, planning staff and SFDB to install story poles to illustrate how the project might affect the views of the ocean and City. See Exhibits 1 & 2. While the SFDB did order story poles, they allowed the applicant to choose whether to install them before the instant Staff Hearing Officer (SHO) hearing or the subsequent SFDB hearing. SFDB Minutes, 11/22/10. Thus the neighbors' concerns have been unaddressed, leading to the Denholtz' and others' opposition.

We ask that you continue this hearing and direct the applicant to erect full story poles per the SFDB Guidelines, 4/27/2010. "The purpose of story poles is to assist the Single Family Design Board (SFDB), staff and interested neighbors (and if proposal is appealed, the Planning Commission and/or Council) in determining consistency regarding appropriate size, bulk and scale; height; neighborhood compatibility and/or minimizing impacts on important public

LAW OFFICE OF MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email(s): airlaw5@cox.net (Marc); anacitrin@cox.net (Ana)

views.” Only through the erection of story poles can the Project’s view blockage be gauged, and hopefully adjusted to reduce or avoid occlusion of important views by neighbors.

2. The Findings Cannot Be Made and the PSP Should Be Denied

In the event that the SHO does not move to continue this hearing and direct the applicant to install story poles, we respectfully request that the Performance Standard Permit (PSP) be denied and a determination made that the CEQA Categorical Exemption is not available for this Project. The basis for denial is the inability to make findings necessary for approval of the PSP. Specifically, there is evidence in the record gained from City files that the lot is actually only 28,964.64 square feet. Exhibit 3. As such, the finding of lot size adequacy cannot be made. Similarly, Green Ridge Lane narrows below the mandatory 16’ for about 20’, in some places to as little as 14’. The road is inadequate to serve the homes it serves now, and clearly cannot accept additional residences. Recently emergency medical personnel were unable to get vehicles close enough to access a resident of Green Ridge Lane experiencing a medical emergency and were forced to hike the person out, using a gurney, to get the patient to the hospital. Green Ridge Lane was too narrow and competing traffic prevented ambulance access.

A Performance Standard Permit is discretionary not obligatory. The code establishes that the SHO “may” grant a performance permit if the findings are made. SBMC § 28.93.020.A. The term “may” in the ordinance denotes an optional or discretionary action, as distinguished from the term “shall” that denotes a mandatory duty. See § 28.02.005. Section 28.92.030.E. again uses the term “may” - a PSP permit “may be granted by the Staff Hearing Officer” for an additional dwelling, reiterating that there is no obligation by the SHO or entitlement to the applicant for this dispensation.

The Municipal Code directs that “the location of such additional dwellings shall comply with the provisions of all other applicable ordinance.” Id. The zoning ordinance prohibits secondary dwelling units in High Fire Hazard Areas. § 28.94.030.Z.11. The Project is in a High Fire Hazard Area. Adding a second dwelling unit is prohibited by ordinance, and as such, the PSP cannot be granted. Staff has indicated they believe a definitional distinction applies, even though the term “additional dwelling unit” is not specifically defined in the zoning ordinance. Sophistic arguments aside, the Project is adjacent to expansive stands of mature chaparral on the steep slopes of Sycamore Canyon - areas that did not burn in either the Tea or Jesusita Fires and thus are still highly prone to wildfire. Fire access is restricted not only by the narrow, fourteen (14) foot wide Green Ridge Lane but also the acute geometry (approximately 160 degree) and steep section of Green Ridge Lane’s intersection with Mission Ridge Road. The prohibition against secondary dwelling units in High Fire Hazard Areas reflects a common-sense awareness that adding multiple families to single driveways, especially on long private roads, is a recipe for disaster. A hasty emergency evacuation of the residents (some of whom are not mobile and require assistance) of Green Ridge Lane while emergency responders are going down the lane to address a fire is simply impossible on a fourteen foot wide road. Thus, in spite of Staff’s belief

in a definitional distinction between secondary and additional dwelling units, the policy rationale for the prohibition of multiple dwellings on single lots applies with vigor to this Project due to its location in the High Fire Hazard Area. The wildfire hazard inherent in Santa Barbara's foothills militates towards a reduced number of families living on this lot, not more.

The Fire Department's acceptance of a substandard road is not dispositive of the adequacy of the roadways for ingress and egress, and in fact, does not overtly purport that it is. The SHO must make an independent evaluation and determination that there are "adequate provisions for ingress and egress" in light of the community roadway capacity. SBMC §28-93-030.E. A recent independent audit of the status of the City's foothill roadways concluded "[m]any of the roads in the Foothill and Extreme Foothill Zones do not meet current Fire Department access . . . standards." (Final Engineer's Report, FY 2010-11, City of Santa Barbara Wildland Fire Suppression Assessment, May 2010, page 2, attached as Exhibit 4). As developed more fully herein, there is ample evidence of the inadequacy of roadways to accommodate additional residents in the area of the Project, and the Fire Department letter fails to address the required adequacy of ingress and egress. Thus the SHO is without evidence to make the required findings.

3. A Categorical Exemption Is Not Available For This Project

Staff has summarily concluded that the Project is categorically exempt without performing the required environmental assessment. The Project is not categorically exempt from CEQA because: a) the project is too large to apply to the small structures exemption; and b) unusual circumstances preclude the use of a categorical exemption. Additionally, the Project is inconsistent with various aspects of the City's Codes, Guidelines and Plans including the Santa Barbara Municipal Code (Neighborhood Protection Ordinance, etc.), Single Family Design Board Guidelines, Single Family Residence Design Guidelines, and the City of Santa Barbara Wildland Fire Plan. Due to these numerous inconsistencies and the public safety risks that they pose, we ask that you direct the applicant to reduce the size of the development including disallowing the second dwelling unit.

A. The Project Is Not Categorically Exempt from CEQA

In enacting CEQA, the legislature empowered the Secretary of the Resources Agency to exempt certain classes of projects which have been determined not to have a significant effect on the environment. Pub. Resources Code § 21084 (a). These classes of projects are now listed in the CEQA Guidelines. The City contends the Project is exempt from CEQA under the Guidelines §15303 for "New Construction or Conversion of Small Structures":

15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and

the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

- (a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

For reasons articulated below, this exemption is not available for the Project and CEQA compliance is required before the Project may be lawfully approved.

- i. A Categorical Exemption is Unavailable Because the Project is Not a Small Structure

The § 15303 exemption is limited to “construction ...of ...small facilities or structures.” The Project is very large. The Project has structures totaling over 8,500 square feet, in contrast to the current existing structure totaling just 2,847 square feet.

The size exceeds the recommendations for Floor to Lot Area Ratios (FAR) delineated in the Single-Family Residence Design Guidelines (“SFR Guidelines”). Compatibility Guideline No. 8 states that applicants should strive for a project which falls in the “less than 85% of maximum FAR” range for the project size. (SFR Guidelines, p. 21-C). Although maximum FARs are applied as guidelines rather than requirements on lots that are 15,000 square feet or larger, the SFR Guidelines have calculated recommended FARs for projects that exceed 15,000 square feet. This 31,584 square foot lot is just under $\frac{3}{4}$ acre.¹ According to the SFR guidelines the recommended dwelling area (85% of maximum FAR) for a $\frac{3}{4}$ acre lot is 4,127 square feet. (SFR Guidelines, p. 23-C). The Project’s total net square footage for all site structures is 5,899 square feet, exceeding the maximum recommended area by 1,772 square feet.

Apparently in order to circumvent the FAR guideline, the FAR for the Project has been calculated assuming that the single lot has been split into two lots: one measuring 15,000 square feet and one measuring 16,584 square feet. With this arbitrary lot division, the FAR of Unit 1 is calculated to be 99.9% and the FAR of Unit 2 at 34%. However, even though they are physically attached to Unit 1, the 459 square foot garage and 125 square foot storage unit have both been attributed to Unit 2. This appears to have been apportioned to ensure that the Unit 1 FAR is less than 100%. Regardless of whether the lot is split or not, or whether a garage and storage structure are located adjacent to Unit 1 and attributed to Unit 2, the maximum FAR guidelines of 85% have been exceeded, and this Project is considered large under the City’s Guidelines and criteria.

¹ The ratio is higher if the lot is smaller.

Additionally, the SFR Guidelines recommend that “careful consideration should be given to projects that propose greater than 250 square feet of [covered porches, loggias, covered decks] or when they are greater than 10% of the total net square footage of the structure.” (SFR Guidelines p. 20-C). The Project proposes 1,111 square feet of covered porches, decks and trellises, which constitute 19% of the total net square footage of the structure, and again greatly exceed the SFR Guidelines.

The large size of this Project including: 1) exceeding the recommended FAR guidelines for dwellings by 1,772 square feet; 2) exceeding the covered porches guidelines by 861 square feet; and 3) adding 4,201 square feet of additional paved surfaces precludes the use of the §15303 Categorical Exemption for small structures. We ask that either you require the applicant to conform with the FAR guidelines or require an environmental impact report for this large structure.

ii. Unusual Circumstances Preclude the Use of a Categorical Exemption

A categorically exempt project loses its exempt status if there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Guidelines § 15300.2 (c); *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098, 1105. To sustain the “unusual circumstances exception”, the evidence must show some feature of the project that distinguishes it from others in the exempt class. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, 139 Cal. App. 4th 1356, 1394 (Cal. App. 6th Dist. 2006).

The Project is “unusual” due to: 1) its large size, both in its dwelling area and outdoor paved surfaces (see above); 2) its adverse effect on the views and aesthetics of the area (see below); and 3) its location in a High Fire Hazard Area and lack of adequate fire access (see below).

In order to determine whether there is a reasonable possibility that the activity will have a “significant effect on the environment” the Agency should conduct an Initial Study using an environmental assessment or similar analysis.... (CEQA Guidelines §15063(a)(2)). Since the City of Santa Barbara has not adopted thresholds for its agencies to conduct consistent and efficient Initial Studies, we look to Appendix G of the CEQA guidelines to determine whether the Project will have a “significant effect” on the environment. In this case we find there are potential significant effects in the “Aesthetics” and “Hazards and Hazardous Materials” sections delineated in Appendix G. Therefore, the §15303 Categorical Exemption should again be precluded based on the “unusual circumstances” exception and an environmental impact report should be required.

City practice for SHO actions on PSPs typically includes a step labeled “environmental assessment.” Unfortunately, there is apparently no defined procedures for conducting an

environmental assessment. The Staff Report's brief attempt at justification of a Categorical Exemption can not suffice as an environmental assessment.

iii. Pattern and Practice: Failure to Adopt Thresholds of Significance

CEQA encourages each public agency to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. (CEQA Guidelines § 15064.7). By adopting thresholds of significance, a lead agency "promotes consistency, efficiency, and predictability" in the environmental review process. (Office of Planning and Research, *Thresholds of Significance: Criteria for Defining Environmental Significance* (CEQA Technical Advice Series, 1994), p. 4). The City of Santa Barbara to date has no adopted CEQA thresholds of significance. Rather, thresholds used for individual projects derive in part from the antiquated Master Environmental Assessment (MEA), from the CEQA Guidelines, from Staff memoranda, and other unknown sources in an *ad hoc* manner. Many City environmental documents, fail to identify the source of the specific thresholds used for individual impact categories. This creates inconsistency and unpredictability in the City's environmental review of each project, deprives the public of the ability to verify the source of a given threshold, and creates the potential for each environmental document to utilize the threshold that best achieves the desired outcome. This failure to adopt thresholds of significance, undermining the consistency and legitimacy of City environmental documents, constitutes a pattern and practice of violating the requirements of CEQA.

iv. Aesthetic Impacts

In the absence of the City's adopted thresholds of significance, we look to Appendix G of the CEQA Guidelines for impact thresholds. Regarding aesthetic impacts, Appendix G (in pertinent part) recommends that the lead agency consider if the project would: "1) have a substantial adverse effect on a scenic vista, or 2) substantially degrade the existing visual character or quality of the site and its surroundings?" (CEQA Guidelines, Appendix G).

Any substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604.)

"That a project affects only a few private views may be a factor in determining whether the impact is significant." *Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal.App. 4th 396, 402. "As on other CEQA topics, the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic. (*Ocean View Estates, supra*, 116 Cal.App.4th at p. 402.)" *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App 4th 903, 937

The Riviera is renowned for its views of the City, the waterfront and the Ocean. Chase Palm Park offers a visual punctuation to the interface of sea and land, while sunsets and sunrises

inspire on a daily basis. From High Ridge and Green Ridge Roads, the site is visible, as it is from most of the residences on these streets.

City General Plan Visual Resources Policy 3.0 states: "New development shall not obstruct scenic view corridors, including those of the ocean and lower elevations of the City viewed respectively from the shoreline and upper foothills, and of the upper foothills and mountains viewed respectively from the beach and lower elevations of the City." There is no modifier "important" limiting which view corridors can be sacrificed and which saved, nor does the text of Policy 3 suggest that obstruction of some scenic view corridors is appropriate. In this case, staff has improperly inserted the qualifier "important" to viewing locations or scenic corridors. The General Plan protects scenic corridors, and the Project is located in a prominent and highly visible location on the Riviera. The Open Space Element designates the Project area as a Major Hillside with open space features and values that should be protected. Page 102. The Conservation Element notes that hillsides provide visual resources to residents, using the Riviera as an example that provides views of the ocean and mountains. Page 10. As the Constitution for all development in a community (*Leshar Communications v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 540) against which all City actions must be consistent, the General Plan is missing from the Staff Report's analysis.

Further, the visual resources goals and policies counsel the CEQA process and serve as thresholds in the absence of other objective criteria. Inconsistencies with the General Plan signal potential CEQA significant impacts, and there is no effort at reconciling these apparent inconsistencies with the CEQA analysis.

v. Fire Hazard

Appendix G of the CEQA Guidelines also lists "Hazards and Hazardous Materials" as a potential impact that should be addressed in an agency's Initial Study. Appendix G (in pertinent part) recommends that the lead agency consider if the project would:

- (1) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? or
- (2) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

The fire hazard present in the Project's neighborhood is an unusual circumstance that distinguishes the Project from other small structures in the Class 3 exemption class. The Project is located along Mission Ridge Road in the "Foothill Zone" which has been designated by the Santa Barbara Wildland Fire Plan ("WF Plan," excerpts attached as Exhibit 5) as a "High Fire Hazard Area." (WF Plan, p. 37, Figure 19).

The WF Plan describes the Foothill Zone as follows: "The potential fire behavior in this zone is considered high to extreme depending on weather and fuel conditions. This zone is defined as areas within the City where a combination of flammable chaparral, oak forest, riparian

vegetation, eucalyptus groves, and landscaped fuels intermix with residential areas to pose a significant fire threat.” (WF Plan, § 2.5.2.).

The City has designated the Foothill Zone as “high risk” as it pertains to the roads. (WF Plan, p. 41, Table 3). The main roads are a “mixture of conforming and existing non-conforming” and are “further narrowed due to vegetation encroachment.” They do not meet the Fire Department’s access standards. These conclusions are reiterated in the 2010 Engineers Report, Exhibit 4. Additionally, the Project is located at the end of a dead-end road that is over 300 ft long. The WF Plan assigns High Ridge Road and Green Ridge Lane to an evacuation unit located to the east. Mission Ridge Road, to which they attach, is in a different evacuation unit. Exhibit 5, page 66.

And, although the Project’s second dwelling unit does not require a Conditional Use Permit, the City’s Zoning Ordinance has banned second dwelling units in “High Fire Hazard Areas”. (SBMC 28.94.030). Thus indicating that the City has determined that additional dwelling units in High Fire Hazard Area pose a safety risk. Notably, Government Code section 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Adding a new residence to the end of Green Ridge Road endangers the ability of other residents to evacuate safely in emergency conditions.

In conclusion, the Project’s location in a High Fire Hazard Area differentiates it from others in the exempt class (of small structures) and poses a significant environmental effect due to its interference with emergency evacuation plans and fire access as well as significant risk of loss, injury or death involving wildland fires.

vi. Location in a Particularly Sensitive Environment Precludes the Use of a Categorical Exemption

A categorically exempt project may also lose its exempt status if they are located in a particularly sensitive environment. Class 3 exemptions (including § 15303) “are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.” (CEQA Guidelines §15300.2).

This Project is located in a “High Fire Hazard Area” with inadequate fire access as determined by the City and the independent Engineer’s Report. CEQA therefore requires environmental review before the Project may be approved. (CEQA Guidelines § 15300.2 (c)).

vii. Cumulative Impacts

A Categorical Exemption is not available when a project may have cumulative impacts. Guidelines § 15300.2(b). Approval of an excessive oversized set of structures, plus a second residential unit, will incite other nearby landowners to consider similar over-development of their lots, resulting in additional traffic on narrow windy roads and the semi-rural nature of the area transitions to an urban setting.

Additionally, replacing 2,700 square feet of structure with over 10,000 square feet of new development, including a new pool and other amenities will materially increase the number of employees assisting with the maintenance and servicing of such a large property, contributing to a cumulative Project impact.

4. The Project Should Be Revised to Comply with Santa Barbara Codes, Plans and Guidelines or the Current Permit Should Be Denied

The Project lacks compliance with numerous City of Santa Barbara Codes, Guidelines and Plans. Specifically, the Project: 1) exceeds FAR guidelines and is not compatible with other homes in the neighborhood; 2) does not protect the health, safety and welfare of the neighborhood due to its proposed second dwelling and location in a high fire hazard zone; 3) does not comply with the Good Neighbor Guidelines; and 4) does not protect public and scenic views of and for the hillside. We ask that you either direct the applicant to comply with these guidelines regarding FARs, neighborhood compatibility, fire safety hazards and views, or require an environmental impact report.

5. A Performance Standard Permit Should Not Be Granted for the Second Dwelling Unit Due to Public Safety and Evacuation Hazards

Where a lot in an E-1 Zone has an area of more than the required lot area for that zone *and adequate provisions for ingress and egress*, a Performance Standard Permit may be granted by the Staff Hearing Officer for the construction of additional one-family dwellings and allowable accessory buildings in these zones. (SBMC 28.93.030).

Based on the reasons above regarding the large size of the Project, the safety concerns regarding fire access and the visual impacts we ask that you deny the Performance Standard Permit for the second dwelling unit. This Project does not adequately provide for ingress and egress for either the Fire Department or the added traffic of a second dwelling unit.

City Fire Development Standards require driveways of at least 16' width for adequate access. Exhibit 7. The width is measured by the paved area that can support a 60,000 pound fire truck. Id. The driveway (Green Ridge Lane) is 16' wide in most places, but narrows to 14' for one section and remains less than 16' in width for approximately 20'.

The City's most recent assessment of the adequacy of wildfire response capacity (Final Engineer's Report, FY 2010-11, City of Santa Barbara Wildland Fire Suppression Assessment, May 2010) concluded that "[m]any of the roads in the Foothill and Extreme Foothill Zones do not meet current Fire Department access . . . standards." Green Ridge Lane, the only access for the new residence, is one such road. The WF Plan makes similar conclusions.

The City's 16' minimum width standard for all private roads and driveways is itself outdated and poses a significant public safety risk. The County of Santa Barbara recognizes that the more houses share a common driveway or private road, the wider that road should be. See, for example, the Santa Barbara County Private Road and Driveway Standards: Development Standard # 1, attached as Exhibit 6. Although these don't control, they are based on the California Fire Code (CFC) and reflect more current standards than the City is using. A driveway serving 2 lots may have a 16' width, but driveways serving 3 to 9 houses require a 20 foot width. CFC 902.1. Any private road serving 2 or more houses requires a 24' width. CFC 902.2.2.1.

There is considerable relevant information available to evaluate the state of Project area roadways. Professor Tom Cova's seminal study Public Safety in the Urban-Wildland Interface: Should Fire-Prone Communities Have a Maximum Occupancy?, Natural Hazards Review, August 2005 looked specifically at the challenges of evacuating a Santa Barbara foothill community in emergency conditions. Exhibit 8. Professor Cova studied Mission Canyon and concluded that "[r]esidential development in fire-prone areas is continuing without commensurate improvements to community-based transportation egress systems." Id., p. 107. Professor Cova's thesis has been that neighborhoods have evacuation capacities limited by the roadways, and that Mission Canyon's steep, twisty, over parked and narrow roadways substantially impaired evacuation capacity. The Riviera has similar road conditions.

Cova's results are validated, and the complexity of the modeling of this issue expanded in Emergency Planning in the Urban-Wildland Interface: Subdivision-Level Analysis of Wildfire Evacuations, Brian Wolshon, and Emile Marchive III, Journal of Urban Planning and Development, March 2007, attached as Exhibit 9. Professor Wolshon concluded that evacuation modeling of neighborhoods threatened with wildfire should look at both microscopic platforms (neighborhood level) as well as macroscopic modeling systems (regional level). Id., at p. 74. The neighborhoods in Wolshon's study also possessed winding, narrow and steep roadways. Id., p. 75. Wolshon concluded, not surprisingly, that the greater the volume of traffic to evacuate, the greater the time required. Id., 80.

The end result is that the City has failed to analyze or even consider the effect of additional dwellings and residents on emergency evacuation capacity. While it is true that any number of uncertainties could and would affect how well an evacuation could proceed, in light of the several studies cited herein concluding that there is currently inadequate emergency evacuation

capacity on area roads, adding a single additional car to an emergency wildfire evacuation could cross the tipping point. The simple fact is that our foothill communities, including the Riviera generally and Green Ridge Road specifically, are oversubscribed, and in a reasonable worst-case fire scenario, some people will not be able to escape. If they happen to leave their homes and are blocked or stopped, or overtaken by flames, they will likely die. That happened in Oakland in 1991 and in Greece on August 26, 2007. See Exhibit 10, on the East Bay Fires; see also Los Angeles Times, August 27, 2007, LATimes.com. ("Most of the people killed in Greece's worst fires in decades were burned to death as they tried to flee, trapped in their cars or in charred fields.") Many, if not all of the conditions that led to the Oakland deaths are present or can easily occur in the Riviera. There has been no showing of adequate ingress and egress, and the PSP should be denied.

6. The SHO Should Decline To Act On This Application And Request Planning Commission Review Of The Project

The City's SHO program was not intended to include complex or controversial land use permitting projects. "The main goal of the Staff Hearing Officer (SHO) program, which was created in 2006, is to improve and simplify the discretionary planning process for projects that are generally non-controversial and do not involve major land use policy considerations. The benefits include freeing up Planning Commission time to spend on projects with broader community and policy issues. It will also enable staff to put their resources into the larger projects, while streamlining the smaller, less controversial ones."

<http://www.santabarbaraca.gov/Government/Hearings/SHO/>

It is evident from the SFDB minutes that numerous neighbors have raised concerns over this project, as validated by the SFDB's own action directing a "substantial" reduction in the Project size. Staff is aware this was and is a controversial project. The Project has evolved to involve more significant land use policy considerations, including emergency access, survey data adequacy, General Plan and zoning ordinance consistency, etc. As such this exceeds the intention for SHO matters.

Commenters were advised by planning staff that there had been considerable discussion in the Planning Department and among planning department staff regarding this project, including a consideration of the timing for story poles. Apparently the expectation that this project would be appealed to the Planning Commission was one justification for the decision to not grant our request that story poles be installed before the SHO hearing. It is unfair to the public and the applicant to prevent the early disclosure of information critical to a public concern over a land use project and to force an appeal to the Planning Commission. Under these circumstances, and where the SHO themselves may have been privy to such discussions, fairness and economy dictates that the SHO should demur and take no action on the Project, and instead send it to the Planning Commission for action. This will trigger installation of story poles, and potentially

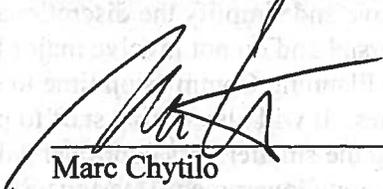
enable a more productive conversation between the applicant and surrounding neighbors that could eliminate much or all of the controversy.

7. Conclusion

In conclusion, we request that you direct the applicant to reduce the project size to conform with the City's Codes, Guidelines, and Plans, and perform an environmental analysis pursuant to CEQA. The Project is not categorically exempt from CEQA because a) the project is too large to apply to the small structures exemption; and b) unusual circumstances preclude the use of a categorical exemption. In addition, we ask that you deny the Performance Standard Permit for the second dwelling unit to reduce the impacts of this large project.

Sincerely,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo

Exhibits

1. Email, Marc Chytilo to Thomas Sanborn, RE: Request for Discussion of Concerns and Story Poles, January 19, 2011
2. Letter, Marc Chytilo to Jaime Limon, Santa Barbara Community Development Department, December 28, 2010
3. City of Santa Barbara Parcel Lookup Results - Details, 8/27/2010
4. Final Engineer's Report, FY 2010-11, City of Santa Barbara Wildland Fire Suppression Assessment, May 2010, pages 1-2
5. City of Santa Barbara Fire Department Wildland Fire Plan, 1/21/2004, pages 25, 41, 64-65
6. Santa Barbara County Private Road and Driveway Standards: Development Standard # 1

Ms. Susan Reardon

January 21, 2011

Page 13

7. City of Santa Barbara Fire Prevention Bureau Access and Hydrant Information, 5/17/01
8. Cova, Thomas, Public Safety in the Urban-Wildland Interface: Should Fire-Prone Communities Have a Maximum Occupancy?, Natural Hazards Review, August 2005
9. Emergency Planning in the Urban-Wildland Interface: Subdivision-Level Analysis of Wildfire Evacuations, Brian Wolshon, and Emile Marchive III, Journal of Urban Planning and Development, March 2007
10. United States Fire Administration, Technical Report Series, The East Bay Hills Fire,, Oakland-Berkley, California, FEMA, excerpts

EXHIBIT 1

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

February 7, 2011

RECEIVED
FEB 07 2011
CITY OF SANTA BARBARA
PLANNING DIVISION

VIA HAND DELIVERY
Mr. John Jostes, Vice Chair
Santa Barbara City Planning Commission
c/o Planning Division
Community Development Department
630 Garden Street
Santa Barbara, California 93101

RE: Appeal of SHO Approval (January 26, 2011)- Application # MST2010-00186
1233 Mission Ridge Road

Vice-Chair Jostes and Members of the Planning Commission,

This office represents Judy and David Denenholtz who hereby appeal the Staff Hearing Officer's January 26, 2011 decision issuing a Performance Standard Permit and authorizing a second dwelling unit as part of a proposed residential project located on the private Green Ridge Lane in Santa Barbara's upper Riviera neighborhood but with a street address of 1233 Mission Ridge Road ("Project"). The Denenholtzs are homeowners near the Project and are concerned about several aspects of the Project including the size, bulk and scale of the project; the Project's blockage of views from homes, streets, and open space areas of the ocean and city; the adequacy of existing roadways, in particular Green Ridge Lane, to provide safe and adequate ingress and egress during wildfire-induced emergency conditions; safety issues surrounding emergency vehicle access based on past experience; and the City's compliance with CEQA. A number of other neighbors have expressed strong reservations about the project and appeared in opposition before the Single Family Design Board (SFDB) and the Staff Hearing Officer. We ask that the Planning Commission reverse the Staff Hearing Officer's decision by denying the Performance Standard Permit for an additional dwelling unit, and directing the preparation of an environmental impact analysis for the remainder of the Project.

This appeal is addressed to the Vice Chair as Planning Commission Chairman Bartlett has appeared on behalf of the owner at the SFDB and may not participate in this proceeding. Gov. Code § 87100, et seq.

The preliminary issues in this appeal are as follows:

LAW OFFICE OF MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email(s): airlaw5@cox.net (Marc); anacitrin@cox.net (Ana)

Issue #1: Inadequate Findings

Findings serve an essential function in administrative decisionmaking, in identifying the substantial evidence upon which a decision is based, demonstrating compliance with all statutory and regulatory criteria and requirements, bridging the analytic gap between the raw evidence and the ultimate decision. *Orinda Ass'n v. Bd. of Supervisors* (1986) 182 Cal. App. 3d 1145, 1162, citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 510. When a statute imposes specific details to the necessary findings, there is a "burden on the approving agency to affirmatively show that it has considered the identified means of [complying with the statute]." *Village Laguna of Laguna Beach v. Board of Supervisors of Orange County* (1982) 134 Cal. App. 3d 1022, 1034.

The minutes of the SHO hearing state that the SHO adopted the findings as contained in the Staff Report. The Staff Report includes the following:

VI. FINDINGS

The Staff Hearing Officer finds the following:

A. PERFORMANCE STANDARD PERMIT (SBMC 28.93.030)

The Staff Hearing Officer finds that the Performance Standard Permit complies with all standards of SBMC 28.93.030.E, including adequate lot area for two residential units, with associated existing accessory space, and adequate ingress and egress for each residence. The Additional Dwelling Unit has adequate ingress and egress, complies with all ordinance standards including height and setbacks, and is located on a lot of adequate size for an Additional Dwelling Unit in the E-1 zone district, as described in Section IV of the staff report.

The Findings fail to identify the substantial evidence supporting these conclusions, do not recite to the applicable authority concerning the adequacy of surveys or the standards for ingress and egress, and fail to bridge the analytical gap. They constitute little more than just recitation of the ordinance. This abbreviated finding deprives the public and reviewing decisionmakers of any information regarding the City's analysis and consideration of the evidence.

Issue # 2: Compliance with Performance Standard Permit Requirements for Additional Dwelling Units (SBMC § 28.93.030E)

The Staff Hearing Officer's action approving an additional dwelling unit on Green Ridge Lane is not in accord with SBMC § 28.93.030E. In order to grant a Performance Standard Permit ("PSP"), the Staff Hearing Officer must find that: 1) the lot has an area two times the lot area required for one unit in the E-1 zone (30,000 square feet for 2 dwelling units); 2) there are adequate provisions for ingress and egress; and 3) the location of the additional dwelling complies with all applicable ordinances. (SBMC 28.93.030E.). This permit was improperly approved because the Staff Hearing Officer did not have evidence to support determinations

regarding: 1) whether this lot has more than the required lot area (30,000 square feet); 2) whether adequate provisions for ingress and egress exist for the additional dwelling unit; and 3) whether the location of the additional dwelling unit complies with all applicable ordinances. Additionally and separately, this project and permit should not and cannot be approved due to the lack of evidence of lot size and the substandard and nonconforming nature of vehicular access.

1) Lot Size

The subject property is zoned E-1 and requires a minimum lot area of 15,000 square feet per unit. Therefore, the lot must be at least 30,000 square feet to meet the PSP requirement for two residences. SBMC § 28.93.030.E.

There is evidence in the record gained from City files that the lot is 28,964.64 square feet. Exhibit 1. The Assistant Planner testified at the SHO hearing that three surveys had been conducted on this lot, each finding the lot to exceed 30,000 square feet. However, the City Planning file indicates that there are no actual surveys, and only one letter from a surveyor that calculated the area of the lot using a 1947 legal description of the property. Appellants have made several reviews of the record, and specifically requested the surveys on several occasions. The SFDB was told there was a survey on file, as was the SHO, when in fact there is no physical survey, only a calculation of area based on an ancient and unverified legal description. It is well known that surveys performed over fifty year ago were not entirely accurate, and some portion of the claimed lot may have been lost by adverse use and possession if occupied by an adjacent building or if the legal description is otherwise in error. The SHO relied on evidence not in the record in the form of staff's incorrect assertion that there were in fact three surveys in the record. This letter is concomitantly a request under the Public Records Act, Gov. Code § 6250 for copies of the three separate physical surveys relied on by the SHO, as they have not been included within the City's planning or design files before the date of the SHO hearing, or were otherwise withheld from appellants.

2) Adequate Ingress and Egress Does Not Exist

The Project is located on a substandard, non-conforming road in a very hazardous part of the City. Green Ridge Lane lacks sufficient width to accommodate any intensification of development or use. There are currently more developed residential lots that rely on Green Ridge Lane as their access than are permitted under the currently applicable zoning ordinance. Approval of a PSP will increase both the amount of development served by the non-conforming Green Ridge Lane and the level of use and activity that will be experienced on the roadway.

a) High Fire Hazard Area Background

The Project is located in the City's "High Fire Hazard Area" due to exposure to wildfire risk. The Project area was evacuated for both the Tea and Jesusita fires in the last 2 years, and is

adjacent to the steep slopes of Sycamore Canyon that remain covered with dense stands of mature chaparral vegetation. This combination of steep slopes and mature vegetation create extraordinary wildfire risks for residents. See generally the Seismic Safety-Safety Element, August 1979, pages 55 et seq. This hazard is exacerbated by Global Climate Change, which is widely accepted to be increasing the frequency and intensity of wildfire, including in Santa Barbara. See, generally, Plan Santa Barbara FEIR, § 18.1.4.

The City has designated the Foothill Zone as “high risk” for wildfire hazard due in part to inadequate roadways. (See Santa Barbara Wildland Fire Plan, Table 3; hereinafter “WF Plan;” excerpts attached as Exhibit 2). The main roads in the Foothill Zone are a “mixture of conforming and existing non-conforming” and are “further narrowed due to vegetation encroachment.”

The hazardous conditions of roadways in the high fire hazard zones is further documented in the recent independent audit of the status of the City’s foothill roadways. The Auditing Engineer concluded “[m]any of the roads in the Foothill and Extreme Foothill Zones do not meet current Fire Department access . . . standards.” (Final Engineer’s Report, FY 2010-11, City of Santa Barbara Wildland Fire Suppression Assessment, May 2010, page 2, attached as Exhibit 3.)

Additionally, the Project is located at the end of a dead-end road that is over 300 ft long and does not provide adequate space for multiple vehicles to turn around. Emergency equipment serving the Project must pass five other driveways that could have exiting traffic or other obstructions in event of an emergency evacuation to gain access to the Project.

The WF Plan assigns High Ridge Road and Green Ridge Lane to an evacuation unit located to the east. Mission Ridge Road, to which they attach, is in a different evacuation unit. Exhibit 5, page 66. This very unusual assignment create considerable doubt how Green Ridge Lane residents would be evacuated - a strict reading of the WF Plan could have them existing out through Sycamore Canyon. Residents have no assurances that they will be correctly advised during a wildfire - advice which may be essential to survival.

b) Ingress and Egress on Green Ridge Lane Does Not Comply with City Fire Development Standards

In 2010 the Santa Barbara City Council adopted Ordinance No. 5535 amending the existing Fire Code to adopt the state Fire Code’s standards and in particular delineating standards for fire access roads as follows:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of **not less than 20 feet** (6096 mm) except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 13 feet 6 inches. If a fire apparatus access road serves three or fewer single-

family residential units, the required width may be reduced to not less than 16 feet (4879 mm) upon the approval of the fire code official. (Emphasis added.)

Green Ridge Lane currently serves six residences and according to the City's ordinance should measure not less than 20 feet wide. In fact, the road is barely 16 feet wide at its widest points, and narrows below 16 feet for about 20 feet, in some places to as little as 14 feet.¹ The road is inadequate to serve the homes it serves now, and clearly cannot accept additional residences or increased levels of use without compromising the safety of existing and new residents. Recently emergency vehicles were blocked by parked vehicles on Green Ridge Lane, compromising response to a Green Ridge Lane resident experiencing a medical emergency. Green Ridge Lane was too narrow and competing parked traffic prevented complete emergency vehicle access.

The Fire Department's acceptance of a substandard road is not dispositive of the adequacy of the roadway for ingress and egress, and in fact, does not overtly purport that it is. It is important to note that evacuation during wildfire and similar emergency conditions is typically managed by law enforcement, not the Fire Department, whose role is to respond to the fire while law enforcement manages evacuation. The Planning Commission must make an independent evaluation and determination that there are "adequate provisions for ingress and egress" in light of the community roadway capacity. SBMC §28-93-030.E. There is ample evidence of the inadequacy of roadways to accommodate additional residents in the area of the Project, and both Fire Inspector Jim Austin's letter and testimony at the hearing failed to address the required adequacy of ingress and egress. Thus the Planning Commission must deny the proposed PSP due to the fundamental shortfall in essential roadway capacity.

c) Studies and Experience Show that Adding Dwelling Units Without Improving Egress is Hazardous

There is considerable relevant information available to evaluate the state of Project area roadways, and demonstrate that adding more residents compromises everyone's ability to safely evacuate. Professor Tom Cova's seminal study Public Safety in the Urban-Wildland Interface: Should Fire-Prone Communities Have a Maximum Occupancy?, Natural Hazards Review, August 2005 looked specifically at the challenges of evacuating a Santa Barbara foothill community in emergency conditions. Exhibit 8. Professor Cova studied Mission Canyon and concluded that "[r]esidential development in fire-prone areas is continuing without commensurate improvements to community-based transportation egress systems." *Id.*, p. 107. Professor Cova's thesis has been that neighborhoods have evacuation capacities limited by the roadways, and that Mission Canyon's steep, twisty, over parked and narrow roadways substantially impaired evacuation capacity. The Riviera has similarly constraining road conditions.

¹ The Fire Code specifies that roadway widths are measured from the face of curbs, where present, and must be surfaced to provide all-weather driving capabilities. CFC 902.2.2.2.

Cova's results are validated, and the complexity of the modeling of this issue expanded in Emergency Planning in the Urban-Wildland Interface: Subdivision-Level Analysis of Wildfire Evacuations, Brian Wolshon, and Emile Marchive III, *Journal of Urban Planning and Development*, March 2007, attached as Exhibit 9. Professor Wolshon concluded that evacuation modeling of neighborhoods threatened with wildfire should look at both microscopic platforms (neighborhood level) as well as macroscopic modeling systems (regional level). *Id.*, at p. 74. The neighborhoods in Wolshon's study also possessed winding, narrow and steep roadways. *Id.*, p. 75. Wolshon concluded, not surprisingly, that the greater the volume of traffic to evacuate, the greater the time required. *Id.*, 80.

The end result is that the City has failed to analyze or even consider the effect of additional dwellings and residents on emergency evacuation capacity. While it is true that any number of uncertainties could and would affect how well an evacuation could proceed, in light of the several studies cited herein concluding that there is currently inadequate emergency evacuation capacity on area roads, adding a single additional car to an emergency wildfire evacuation could cross the tipping point. The simple fact is that our foothill communities, including the Riviera generally and Green Ridge Lane specifically, are oversubscribed, and in a reasonable worst-case fire scenario, some people will not be able to escape. If they happen to leave their homes and are blocked or stopped, or overtaken by flames, they will likely die. That happened in Oakland in 1991 and in Greece on August 26, 2007. See Exhibit 10, United States Fire Administration, Technical Report Series, The East Bay Hills Fire., Oakland-Berkley, California, FEMA, excerpts, on the East Bay Fires. See also Los Angeles Times, August 27, 2007, LATimes.com. ("Most of the people killed in Greece's worst fires in decades were burned to death as they tried to flee, trapped in their cars or in charred fields.") Many of the conditions that led to the Oakland deaths are present or can occur in the Riviera.

Again, given the location of the Project in a high fire hazard area in a neighborhood of narrow winding roadways, there has been no showing of adequate ingress and egress for adding a dwelling unit to Green Ridge Lane, and the PSP should be denied.

d) The Existing Development Is Non-Conforming and the Proposed Development Will Improperly Expand That Nonconforming Use

The existing guesthouse on the site is non-conforming with applicable E-1 zoning, which allows only a single family home in the zone district. A second dwelling unit is prohibited in the E-1 zone district when in a high fire hazard area. § 28.94.030.Z.11. While "additional one-family dwellings" are arguably allowable with a PSP, the existing guest house does not have the benefit of a PSP and as such is currently non-conforming under existing zoning. It is axiomatic that the City cannot allow the expansion of nonconforming uses. See generally *Edwards v. County of Los Angeles* (1953) 40 Cal. 2d 642, 651 (contrasting a landowners rights regarding continuance of nonconforming uses with proposals to expand such uses).

Additionally, the E-1 zone requires at least 90' of public street frontage. SBMC §28.15.080. The lot in question was separated from Arbolado Road by a lot split and has no public road frontage.

Finally, the uses associated with the existing development on the site is non-conforming as to roadway width and access. As noted above, the minimum roadway width for a residence on a private roadway serving 4 or more houses is 20'. The existing roadway is surfaced to 14' wide near its intersection with Mission Ridge Road, and remains below 16' for approximately 20'.

A PSP may only be issued if the additional dwellings "comply with the provisions of all other applicable ordinances." SBMC § 28.93.030.E.

The zoning ordinance includes provisions, as do most zoning ordinances, for the cessation of non-conforming uses and activities when there are physical changes at the property. SBMC § 29.87.035.B specifies that non-conforming uses may continue only if there is no enlargement of the space devoted to the non-conforming use. Once a non-conforming structure is replaced by a conforming structure, that structure "shall not thereafter be used or occupied by a nonconforming use. Id., at C. The zoning ordinance further establishes that these provisions apply to both structures and uses that become nonconforming due to "any subsequent change in regulations," such as the City's adoption of the 20' minimum road width standards. SBMC §29.87.035.

SBMC § 29.87.035 should be applied in light of its purpose to eventually conform the uses in each district to the zoning law and current regulations including the fire code. In this case, the City Council recently adopted a fire code with minimum fire access road requirements. Green Ridge Road is nonconforming to the new 20 foot safety access requirement and therefore any expansion of development (increasing the residences from six to seven) is an expansion of the nonconforming use.

The spirit of zoning ordinances and accompanying provisions allowing continued nonconforming uses is to restrict, not increase, the nonconforming use. *Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651. Accordingly, courts generally sustain restrictions on extension or enlargement of a nonconforming use, thereby enforcing the zoning ordinance and upholding the police power. The public welfare must be considered from the standpoint of the objective of zoning and of all the property within any particular use district. *Rehfeld v. San Francisco*, 218 Cal. 83, 85. It was not and is not contemplated that pre-existing nonconforming uses are to be perpetual. *State ex rel. Miller v. Cain*, 40 Wn.2d 216.

Given the multiple forms of zoning ordinance nonconformance on this site, and in particular the inconsistency between minimum roadways widths and the existing conditions, the finding of adequate roadway ingress and egress - continuing and expanding a non-conforming use - is not supported by the evidence.

The existing "guest house" has been cited by the City as containing an unpermitted and illegal kitchen, and as such, is not a guest house at all. The applicant cannot claim any form of vested or other right to an illegal use of this structure. The applicant seeks a PSP for an "additional dwelling unit" that they have characterized as a "guest house" but is allowed as a "one-family dwelling." A one-family dwelling can presumably be used as any ordinary residence, unlike the existing structure which has no kitchen. There are no Project-specific conditions on the level of use, or limits imposed by the zoning ordinance, thus the City's analysis, for ingress/egress adequacy findings, zoning ordinance consistency, including nonconforming uses, and for CEQA impact analysis purposes must consider "worst case" levels of usage up to the maximum allowable under ordinance. There is no specific treatment or limitations for guest houses in the zoning ordinance, so the appropriate level of use is as a full-time one-family dwelling unit on the site. This use clearly involves a much higher level of activity and site utilization than the current conditions - a guest house with no kitchen - which conflict with the narrow roadway and nonconforming ingress and egress. Under the zoning ordinance, the City may not allow the expansion of the nonconforming roadway use as part of approving the expansion of structural development on the site. SBMC §29.87.035.C.

e) The Location of the Additional Dwelling Unit Does Not Comply with the Provisions of All Other Applicable Ordinances

The Municipal Code directs that "the location of such additional dwellings shall comply with the provisions of all other applicable ordinances." § 28.93.030E. The zoning ordinance prohibits secondary dwelling units in High Fire Hazard Areas. § 28.94.030.Z.11. The Project is in a High Fire Hazard Area. Adding a second dwelling unit is prohibited by ordinance, and as such, the PSP cannot be granted.

Staff has indicated they believe a definitional distinction applies between a "secondary dwelling unit" and an "additional dwelling unit," even though the term "additional dwelling unit" is not specifically defined in the zoning ordinance. Sophistic arguments aside, the Project is adjacent to expansive stands of mature chaparral on the steep slopes of Sycamore Canyon - areas that did not burn in either the Tea or Jesusita Fires and thus are still highly prone to wildfire. Fire access is restricted not only by the narrow, fourteen (14) foot wide Green Ridge Lane but also the acute geometry (approximately 160 degree) and steep section of Green Ridge Lane's intersection with Mission Ridge Road. The prohibition against secondary dwelling units in High Fire Hazard Areas reflects a common-sense awareness that adding multiple families to single driveways, especially on long private roads, is a recipe for disaster. A hasty emergency evacuation of the residents (some of whom are not mobile and require assistance) of Green Ridge Lane while emergency responders are going down the lane to address a fire is simply impossible on a fourteen foot wide road. Thus, in spite of Staff's belief in a definitional distinction between secondary and additional dwelling units, the policy rationale for the prohibition of multiple dwellings on single lots applies with vigor to this Project due to its location in the High Fire

Hazard Area. The wildfire hazard inherent in Santa Barbara's foothills militates towards a reduced number of families living on this lot, not more.

f) General Plan Inconsistencies

The Project conflicts with the WF plan policies identified supra. It conflicts with the Seismic Safety and Safety Element's Recommended Development Control that all proposals for new development comply with City regulations, (Seismic Safety and Safety Element at 61); that roadways be maintained at 32' in width on a 40' right of way, (id., at 59) and that emergency access routes for new subdivisions (to which the PSP is tantamount) be adequate to allow fire and other emergency service vehicles to gain access. Id., at 62.

Additionally, the Project conflicts with a number of initiated elements of Santa Barbara's General Plan revision, Plan Santa Barbara. These include LG6, and implementing action LG6.2, limiting new residential development in high fire areas; LG 16 and implementing action LG16.1 considering lower densities in areas in areas constrained by fire access and viewshed considerations; and H15, prohibiting second units in the high fire hazard zones. The City must consider the effect of proposed developments in light of initiated General Plan revisions.

As the blueprint for all development, the General Plan must be considered in all development actions. The General Plan makes repeated referrals to the goals, policies and needs to restrict second dwelling units in high fire hazard areas as a general rule. This rationale is heightened due to the inadequate width of Green Ridge Lane. General Plan inconsistencies necessitate denial of the PSP.

g) Nuisance

The proposed intensification of the development and activity on the site constitutes a nuisance for the residents of Green Ridge Lane and for residents of the Riviera that rely on Mission Ridge Road as an evacuation route. The project proposes to exacerbate a hazardous condition in an already hazardous area prone to wildfire. It fails to meet basic zoning ordinance standards to address public health and safety issues. As such it is a private and public nuisance. See generally SBMC §28.98.001 (any buildings or use of property contrary to zoning ordinance are public nuisance).

For all these reasons, appellant believes that the PSP permit should not and cannot be issued for the proposed Project. We ask the Planning Commission to overturn the decision of the SHO and deny the PSP.

Issue #3: The Project Requires CEQA Impact Analysis

A Performance Standard Permit is a discretionary action subject to CEQA. The code establishes that the SHO "may" grant a performance permit if the findings are made. SBMC § 28.93.020.A. The term "may" in the ordinance denotes an optional or discretionary action, as distinguished from the term "shall" that denotes a mandatory duty. See § 28.02.005. Section 28.92.030.E. again uses the term "may" - a PSP permit "may be granted by the Staff Hearing Officer" for an additional dwelling, reiterating that there is no obligation by the SHO or entitlement to the applicant for this dispensation.

1) A Categorical Exemption Is Not Available For This Project

The Staff Hearing Officer and planning staff have summarily concluded that the Project is categorically exempt from CEQA under the § 15303 exemption without performing any form of environmental assessment.

In enacting CEQA, the legislature empowered the Secretary of the Resources Agency to exempt certain classes of projects which have been determined not to have a significant effect on the environment. Pub. Resources Code § 21084 (a). These classes of projects are now listed in the CEQA Guidelines. The City contends the Project is exempt from CEQA under the Guidelines §15303 for "New Construction or Conversion of Small Structures":

15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

The Project is not categorically exempt from CEQA because: a) the project is too large to apply to the small structures exemption; b) unusual circumstances preclude the use of a categorical exemption; c) its location in a particularly sensitive environment precludes the use of a categorical exemption; and d) the cumulative impacts preclude exemption. The Staff Hearing Officer's findings are not in compliance with CEQA, and a full environmental impact assessment should be required before the Project may be lawfully approved.

a) A Categorical Exemption is Unavailable Because the Project is Not a Small Structure

The § 15303 exemption is limited to “construction ...of ...**small** facilities or structures.” The Project is very large. The Project has structures totaling over 8,500 square feet, in contrast to the current existing structure totaling just 2,847 square feet.

The size exceeds the recommendations for Floor to Lot Area Ratios (FAR) delineated in the Single-Family Residence Design Guidelines (“SFR Guidelines”). Compatibility Guideline No. 8 states that applicants should strive for a project which falls in the “less than 85% of maximum FAR” range for the project size. (SFR Guidelines, p. 21-C). Although maximum FARs are applied as guidelines rather than requirements on lots that are 15,000 square feet or larger, the SFR Guidelines have calculated recommended FARs for projects that exceed 15,000 square feet. This 31,584 square foot lot is just under $\frac{3}{4}$ acre.² According to the SFR guidelines the recommended dwelling area (85% of maximum FAR) for a $\frac{3}{4}$ acre lot is 4,127 square feet. (SFR Guidelines, p. 23-C). The Project’s total net square footage for all site structures is 5,899 square feet, exceeding the maximum recommended area by 1,772 square feet.

Apparently in order to circumvent the FAR guideline, the FAR for the Project has been calculated assuming that the single lot has been split into two lots: one measuring 15,000 square feet and one measuring 16,584 square feet. With this arbitrary lot division, the FAR of Unit 1 is calculated to be 99.9% and the FAR of Unit 2 at 34%. However, even though they are physically attached to Unit 1, the 459 square foot garage and 125 square foot storage unit have both been attributed to Unit 2. This appears to have been apportioned to ensure that the Unit 1 FAR is less than 100%. Regardless of whether the lot is split or not, or whether a garage and storage structure are located adjacent to Unit 1 and attributed to Unit 2, the maximum FAR guidelines of 85% have been exceeded, and this Project is considered large under the City’s Guidelines and criteria.

Additionally, the SFR Guidelines recommend that “careful consideration should be given to projects that propose greater than 250 square feet of [covered porches, loggias, covered decks] or when they are greater than 10% of the total net square footage of the structure.” (SFR Guidelines p. 20-C). The Project proposes 1,111 square feet of covered porches, decks and trellises, which constitute 19% of the total net square footage of the structure, and again greatly exceeds the SFR Guidelines. Lastly, to add to this large scale, the Project proposes 2,128 square feet of uncovered patios, 4,201 square feet of pervious paved surface and a pool and spa.

The large size of this Project including: 1) exceeding the recommended FAR guidelines for dwellings by 1,772 square feet; 2) exceeding the covered porches guidelines by 861 square feet; and 3) adding 6,329 square feet of additional patios and paved surfaces precludes the use of the

² The ratio is higher if the lot is smaller.

§15303 Categorical Exemption for small structures. We ask that either you require the applicant to conform with the FAR guidelines or require an environmental impact report for this large structure.

b) Unusual Circumstances Preclude the Use of a Categorical Exemption

A categorically exempt project loses its exempt status if there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Guidelines § 15300.2 (c); *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098, 1105. To sustain the “unusual circumstances exception”, the evidence must show some feature of the project that distinguishes it from others in the exempt class. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, 139 Cal. App. 4th 1356, 1394 (Cal. App. 6th Dist. 2006).

The Project is “unusual” due to: 1) its large size, both in its dwelling area and outdoor paved surfaces (see above); 2) its inconsistency with the applicable zoning ordinance and General Plan (see above); 3) its adverse effect on the views and aesthetics of the area (see below); and 4) its location in a High Fire Hazard Area and lack of adequate fire access (see above).

In order to determine whether there is a reasonable possibility that the activity will have a “significant effect on the environment” the Agency should conduct an Initial Study using an environmental assessment or similar analysis.... (CEQA Guidelines §15063(a)(2)). Since the City of Santa Barbara has not adopted thresholds for its agencies to conduct consistent and efficient Initial Studies, we look to Appendix G of the CEQA guidelines to determine whether the Project will have a “significant effect” on the environment. In this case we find there are potential significant effects in the “Aesthetics” and “Hazards and Hazardous Materials” sections delineated in Appendix G. In particular, the existence of substandard road widths in a high fire hazard area jeopardizes emergency services to current and Project residents. A 20’ to 32’ road width is necessary to allow residents to evacuate while emergency equipment enters the area to respond to the emergency. A 14’ wide road and irregular intersection geometry preclude the provision of adequate access to the site. Therefore, the §15303 Categorical Exemption should again be precluded based on the “unusual circumstances” exception and an environmental impact report should be required.

i) Pattern and Practice: Failure to Adopt Thresholds of Significance

City practice for SHO actions on PSPs typically includes a step labeled “environmental assessment.” Unfortunately, there is apparently no defined procedures for conducting an environmental assessment. The SHO officer’s Findings and the Staff Report’s brief attempt at justification of a Categorical Exemption cannot suffice as an environmental assessment.

Further, CEQA encourages each public agency to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. (CEQA Guidelines § 15064.7). By adopting thresholds of significance, a lead agency “promotes consistency, efficiency, and predictability” in the environmental review process. (Office of Planning and Research, *Thresholds of Significance: Criteria for Defining Environmental Significance* (CEQA Technical Advice Series, 1994), p. 4)). The City of Santa Barbara to date has not adopted CEQA thresholds of significance. Rather, thresholds used for individual projects derive in part from the antiquated Master Environmental Assessment (MEA), from the CEQA Guidelines, from Staff memoranda, and other unknown sources in a capricious *ad hoc* manner. Many City environmental documents, including the instant Staff Report, fail to identify the source of the specific thresholds used for individual impact categories. This creates inconsistency and unpredictability in the City’s environmental review of each project, deprives the public of the ability to verify the source of a given threshold, and creates the potential for each environmental document to utilize the threshold that best achieves the desired outcome. This failure to adopt thresholds of significance, undermining the consistency and legitimacy of City environmental documents, constitutes a pattern and practice of violating the requirements of CEQA.

ii) Aesthetic Impacts

In the absence of the City’s adopted thresholds of significance, we look to Appendix G of the CEQA Guidelines for impact thresholds. Regarding aesthetic impacts, Appendix G (in pertinent part) recommends that the lead agency consider if the project would: “1) have a substantial adverse effect on a scenic vista, or 2) substantially degrade the existing visual character or quality of the site and its surroundings” (CEQA Guidelines, Appendix G).

Any substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604.)

“That a project affects only a few private views may be a factor in determining whether the impact is significant.” *Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal.App. 4th 396, 402. “As on other CEQA topics, the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic. (*Ocean View Estates, supra*, 116 Cal.App.4th at p. 402.)” *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 937

The Riviera is renowned for its views of the City, the waterfront and the Ocean. Chase Palm Park offers a visual punctuation to the interface of sea and land, while sunsets and sunrises inspire on a daily basis. From High Ridge and Green Ridge Lanes, the site is visible, as it is from most of the residences on these streets.

City General Plan Visual Resources Policy 3.0 states: “New development shall not obstruct scenic view corridors, including those of the ocean and lower elevations of the City viewed

respectively from the shoreline and upper foothills, and of the upper foothills and mountains viewed respectively from the beach and lower elevations of the City.” There is no modifier “important” limiting which view corridors can be sacrificed and which saved, nor does the text of Policy 3 suggest that obstruction of some scenic view corridors is appropriate. In this case, staff has improperly inserted the qualifier “important” to viewing locations or scenic corridors. The General Plan protects scenic corridors, and the Project is located in a prominent and highly visible location on the Riviera. The Open Space Element designates the Project area as a Major Hillside with open space features and values that should be protected. Page 102. The Conservation Element notes that hillsides provide visual resources to residents, using the Riviera as an example that provides views of the ocean and mountains. Page 10. As the Constitution for all development in a community (*Leshner Communications v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 540) against which all City actions must be consistent, the General Plan is missing from the Staff Report’s analysis.

Further, the visual resources goals and policies counsel the CEQA process and serve as thresholds in the absence of other objective criteria. Inconsistencies with the General Plan signal potential CEQA significant impacts, and there is no effort at reconciling these apparent inconsistencies with the CEQA analysis.

iii) Fire Hazard

Appendix G of the CEQA Guidelines also lists “Hazards and Hazardous Materials” as a potential impact that should be addressed in an agency’s Initial Study. Appendix G (in pertinent part) recommends that the lead agency consider if the project would: 1) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? or 2) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

The fire hazard present in the Project’s neighborhood is an unusual circumstance that distinguishes the Project from other small structures in the Class 3 exemption class. The Project is located along Mission Ridge Road in the “Foothill Zone” which has been designated by the Santa Barbara Wildland Fire Plan (“WF Plan,” excerpts attached as Exhibit 5) as a “High Fire Hazard Area.” (WF Plan, p. 37, Figure 19).

The WF Plan describes the Foothill Zone as follows: “The potential fire behavior in this zone is considered high to extreme depending on weather and fuel conditions. This zone is defined as areas within the City where a combination of flammable chaparral, oak forest, riparian vegetation, eucalyptus groves, and landscaped fuels intermix with residential areas to pose a significant fire threat.” (WF Plan, § 2.5.2.).

The City has designated the Foothill Zone as “high risk” as it pertains to the roads. (WF Plan, p. 41, Table 3). The main roads are a “mixture of conforming and existing non-conforming” and are “further narrowed due to vegetation encroachment.” They do not meet the Fire Department’s access standards. These conclusions are reiterated in the 2010 Engineers Report, Exhibit 4.

Additionally, the Project is located at the end of a dead-end road that is over 300 ft long. The WF Plan assigns High Ridge Road and Green Ridge Lane to an evacuation unit located to the east. Mission Ridge Road, to which they attach, is in a different evacuation unit. Exhibit 5, page 66.

And, although the Project's second dwelling unit does not require a Conditional Use Permit, the City's Zoning Ordinance has banned second dwelling units in "High Fire Hazard Areas". (SBMC 28.94.030). Thus indicating that the City has determined that additional dwelling units in High Fire Hazard Area pose a safety risk. Notably, Government Code section 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Adding a new residence to the end of Green Ridge Lane endangers the ability of other residents to evacuate safely in emergency conditions.

In conclusion, the Project's location in a High Fire Hazard Area differentiates it from others in the exempt class (of small structures) and poses a significant environmental effect due to its interference with emergency evacuation plans and fire access as well as significant risk of loss, injury or death involving wildland fires.

c) Location in a Particularly Sensitive Environment Precludes the Use of a Categorical Exemption

A categorically exempt project may also lose its exempt status if they are located in a particularly sensitive environment. Class 3 exemptions (including § 15303) "are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies." (CEQA Guidelines §15300.2).

This Project is located in a "High Fire Hazard Area" with inadequate fire access as determined by the City and the independent Engineer's Report. CEQA therefore requires environmental review before the Project may be approved. (CEQA Guidelines § 15300.2 (c)).

d) Cumulative Impacts Preclude the Use of a Categorical Exemption

A Categorical Exemption is not available when a project may have cumulative impacts. Guidelines § 15300.2(b). Approval of an excessive oversized set of structures, plus a second residential unit, will incite other nearby landowners to consider similar over-development of

their lots, resulting in additional traffic on narrow windy roads and the semi-rural nature of the area transitions to an urban setting.

Additionally, replacing 2,700 square feet of structure with over 10,000 square feet of new development, including a new pool and other amenities will materially increase the number of employees assisting with the maintenance and servicing of such a large property, contributing to a cumulative Project impact.

Issue # 4: Denial of the Benefits of and Interference with the Good Neighbor Process

As explained to the applicant and the SFDB, the neighbors on Green Ridge Lane are troubled by the size of the structures and site intensification with the addition of a full second house on the lot. The SFDB agreed that the initial proposal was far too large for the neighborhood and site, and some reductions were made. The neighbors remain skeptical, particularly concerning specific view corridors, including views to Chase Palm Park and the waterfront, and asked the applicant, planning staff and SFDB to install story poles to illustrate how the project might affect the views of the ocean and City. See Exhibits 1 & 2. While the SFDB did order story poles, they allowed the applicant to choose whether to install them before the instant Staff Hearing Officer (SHO) hearing or the subsequent SFDB hearing. SFDB Minutes, 11/22/10. The applicant disregarded requests from the neighborhood to install story poles. Thus the neighbors' view impact concerns have been unaddressed, leading to the Denenholtz' and others' opposition.

We ask that you continue this hearing and direct the applicant to erect full story poles per the SFDB Guidelines, 4/27/2010. "The purpose of story poles is to assist the Single Family Design Board (SFDB), staff and interested neighbors (and if proposal is appealed, the Planning Commission and/or Council) in determining consistency regarding appropriate size, bulk and scale; height; neighborhood compatibility and/or minimizing impacts on important public views." Only through the erection of story poles can the Project's view blockage be gauged, and hopefully adjusted to reduce or avoid occlusion of important views by neighbors. Staff has advised they intend to require story poles in advance of the Planning Commission hearing, which while appreciated, is too late in the process for a "good Neighbor" resolution of community concerns.

It is evident from the SFDB minutes that numerous neighbors have raised concerns over this project, as validated by the SFDB's own action directing a "substantial" reduction in the Project size. Staff is aware this was and is a controversial project. The Project has evolved to involve more significant land use policy considerations, including emergency access, survey data adequacy, General Plan and zoning ordinance consistency, etc. As such this Project exceeds the scope of Projects appropriate for the SHO's determination. Appellants asked the SHO to simply refer this project to the Planning Commission, but that request was denied.

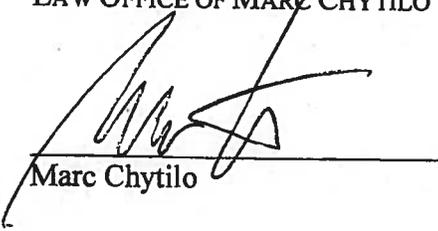
Appellants just need to know the effect of the Project on their neighborhood, their views and their safety. A critical aspect of this is story poles to show the project's effects on view corridors. Appellants were advised by planning staff that there had been considerable discussion in the Planning Department and among planning department staff regarding this project, including a consideration of the timing for story poles. Apparently the expectation that this project would be appealed to the Planning Commission was one justification for the decision to not grant our request that story poles be installed before the SHO hearing. This is, of course, a self-fulfilling prophecy as Appellants cannot be expected to waive all appellate rights before seeing the effect the Project will have on this homes. It is unfair to the public for the applicant to prevent the early disclosure of information critical to a public concern over a land use project and to force an appeal to the Planning Commission. Unfortunately, this process has been administered in such a way as to mandate this appeal for affected neighbors to be apprised of basic project information before waiving their appellate rights.

Conclusion

In conclusion, we request that you grant this appeal and deny the Performance Standard Permit for the additional dwelling and require that a full environmental review process be initiated for the remaining Project. The Staff Hearing Officer did not make sufficient findings in accord with the Zoning Ordinance and therefore the Performance Standard Permit should be denied. Additionally, the Project is not categorically exempt from CEQA because a) the project is too large to apply to the small structures exemption; b) unusual circumstances preclude the use of a categorical exemption; c) location in a particularly sensitive environment precludes the use of a categorical exemption; and d) cumulative impacts preclude the use of a categorical exemption.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo

Exhibits

(attached to SHO Comment letter and not repeated here, available upon request)

1. Email, Marc Chytilo to Thomas Sanborn, RE: Request for Discussion of Concerns and Story Poles, January 19, 2011

2. Letter, Marc Chytilo to Jaime Limon, Santa Barbara Community Development Department, December 28, 2010
3. City of Santa Barbara Parcel Lookup Results - Details, 8/27/2010
4. Final Engineer's Report, FY 2010-11, City of Santa Barbara Wildland Fire Suppression Assessment, May 2010, pages 1-2
5. City of Santa Barbara Fire Department Wildland Fire Plan, 1/21/2004, pages 25, 41, 64-65
6. Santa Barbara County Private Road and Driveway Standards: Development Standard # 1
7. City of Santa Barbara Fire Prevention Bureau Access and Hydrant Information, 5/17/01
8. Cova, Thomas, Public Safety in the Urban-Wildland Interface: Should Fire-Prone Communities Have a Maximum Occupancy?, Natural Hazards Review, August 2005
9. Emergency Planning in the Urban-Wildland Interface: Subdivision-Level Analysis of Wildfire Evacuations, Brian Wolshon, and Emile Marchive III, Journal of Urban Planning and Development, March 2007
10. United States Fire Administration, Technical Report Series, The East Bay Hills Fire,, Oakland-Berkley, California, FEMA, excerpts

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

March 4, 2011

VIA HAND DELIVERY
Mr. John Jostes, Vice Chair
Santa Barbara City Planning Commission
c/o Planning Division
Community Development Department
630 Garden Street
Santa Barbara, California 93101

RECEIVED
MAR 07 2011
CITY OF SANTA BARBARA
PLANNING DIVISION

RE: Additional Issues: Appeal of SHO Approval (January 26, 2011)
Application # MST2010-00186 - 1233 Mission Ridge Road
Planning Commission Hearing March 10, 2011

Vice-Chair Jostes and Members of the Planning Commission,

This office represents Judy and David Denenholz who in letter dated February 7, 2011 appealed the Staff Hearing Officer's January 26, 2011 decision issuing a Performance Standard Permit and authorizing a second dwelling unit as part of a proposed residential project located on the private Green Ridge Lane in Santa Barbara's upper Riviera neighborhood but with a street address of 1233 Mission Ridge Road ("Project").

We submit this letter to identify additional issues for the Planning Commission's consideration, along with the original issues delineated in our February 7, 2011 letter.

We respectfully request that the Planning Commission reverse the Staff Hearing Officer's decision by denying the Performance Standard Permit (PSP) for an additional dwelling unit, determining a Categorical Exemption is not appropriate and directing the preparation of a CEQA environmental review document for the remainder of the Project.

The additional issues in this appeal are as follows:

Additional Issue #1: Street Frontage

In order to obtain a PSP for an additional dwelling, the Municipal Code states that "the location of such additional dwellings shall comply with the provisions of all other applicable ordinances." SBMC § 28.93.030E. Within the E-1 zone, the zoning ordinance requires that "each single-family dwelling with its accessory buildings hereafter erected shall be located upon a lot having . . . **not less than ninety feet (90') of frontage on a public street.**" SBMC § 28.15.080

LAW OFFICE OF MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email(s): airlaw5@cox.net (Marc); anacitrin@cox.net (Ana)

(emphasis added). This project proposes two single-family dwellings and therefore the zoning ordinance requires 180 feet of street frontage.

Neither the Staff Hearing Officer findings, nor the Staff Report below addressed the issue of street frontage.

IV. ZONING ORDINANCE CONSISTENCY

Standard	Requirement/ Allowance	Existing	Proposed
Setbacks			
-Front	30'	>30'	30'
-Interior	10'	>10'	10'
Building Height	30'	1 story	24'
Parking	4	2	4
Lot Area Required for Each Unit	15,000 sf	31,584 sf	No change
Open Yard	1,250 sf	>1,250 sf	>1,250 sf

The proposed structures meet all of the current zoning requirements.

It appears from the applicant's plans that the street frontage is approximately 16 feet. This clearly does not meet the current zoning requirement of 180 feet of street frontage. The Staff Hearing Officer did not make findings regarding the street frontage and the PSP should be denied because the project does not "comply with the provisions of all other applicable ordinances." SBMC § 28.93.030E.

Additional Issue # 2: Building Height

During the SHO hearing, the Assistant Planner corrected a mistake made in the Staff Report regarding the building height calculation. She reported that the architect had informed her that the building height was actually 29 feet 6 inches, not 24 feet as written in the Staff Report.

The Single Family-Residence Design Guidelines advises applicants to avoid excessive building height, which is overtly defined as 25' or more. "Homes taller than 25' tall are usually incompatible in most single family neighborhoods." SFRDG, p. 26-C, § 9.2; see also id p. 53-H, §29.2 (Hillside District projects usually have a height of 25' or less, even though the zoning ordinance allows 30'). This project, at 29 feet 6 inches, exceeds these guidelines and exceeds the height of the surrounding homes.

The added height of this project, its inconsistency with the City's guidelines and incompatibility with applicable policies intended to avoid environmental impacts preclude the use of a Categorical Exemption. Guidelines § Appendix G, § X establishes that projects which conflict

with “any applicable land use plan, policy or regulation . . . adopted for the purpose of avoiding or mitigating an environmental effect” ordinarily involve a potentially significant impact. See *The Pocket Protectors v City of Sacramento*, 124 Cal. App. 4th 903, 930. Guidelines § 15300.2(c) disallows use of a Categorical Exemption when “there is a reasonable possibility” that the project will have a significant impact due to unusual circumstances. See generally LOMC Letter, February 7, 2011, pages 11-12).

The added height also affects the unusual circumstances analysis, disallowing use of a Categorical Exemption under CEQA Guidelines § 15300.2(a). A categorically exempt project loses its exempt status if there is a reasonable possibility that the activity will have a significant effect on the environment due to its sensitive location. *Id.*; see also LOMC Letter, February 7, 2011, pages 12-15; *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098, 1105. This project is located in a scenic area (see February 7, 2011, *supra*, pages 13-14). The 29 foot 6 inch height - in excess of the recommended height in the Single Family Residence Design Guidelines and therefore considered incompatible with the surrounding single family neighborhood - is another location-specific factor establishing the sensitivity of the project site and potential Project impacts.

Lastly, the continually changing project description has made it difficult for my client and other neighbors to participate in the good neighbor process in a meaningful way. The architectural plans have changed several times and the height dimensions have yet to be included in the plans. Additionally, the neighbors have consistently requested the installation of story poles throughout this process to no avail.

Additional Issue # 3: Drainage

This Project involves a substantial amount of paving and impermeable surfaces, and as such will generate a substantial volume of runoff. It is located in an area where downstream drainage through developed areas can be an issue, but there is no information evaluating the issue.

According to the Assistant Planner, the applicant is not required to submit drainage calculations until they submit for a Building Permit, and that they only must retain and treat a 1” in 24 hour storm event. In December 18-19, 2010 Santa Barbara’s downtown received over 5.5” of rainfall in 48 hours, and the foothill areas - including the Project - affected by orthographic rainfall enhancement - experienced considerably greater amounts of rainfall.

According to the City’s Storm Water BMP Guidance Manual (June 2008) referenced by staff, the Project is defined as a large (Tier 3) project since it involves over 4,000 square feet of impervious surfaces. *Id.*, pages 1-9 to 1-10. Tier 3 projects must submit a design review application and comply with all BMP requirements at §6.2, including consideration of 24 hour flows from 25 year storms as calculated in Appendix C. Appendix C of the BMP Guidance states the 24 hour flow from a 25 year storm is 6.71 inches. Although rainfall volume for

redevelopment projects is calculated by comparing the existing versus proposed project, staff's contention that 1" flow is all that is required has no basis in the record and no apparent basis in fact.

The drainage issues on this lot are exacerbated by the slope of the lot (approximately 9%) and the steep slopes of the surrounding lots, particularly the lot to the south. Drainage concerns are further exacerbated by the projects' large size including structures and pavement totaling over 15,000 square feet (7,170 s.f. structures, 3,480 s.f. patios, 4,201s.f. pavement, 800 s.f. pool/spa). This current project exceeds the existing development by over 12,000 square feet, creating an extraordinary volume of potential surface runoff. The BMP Guidance Manual clearly contemplates analysis of drainage issues as part of design and development review, not as an afterthought.

The City's NPDES Stormwater Management Program (SWMP), adopted in January 2009 to comply with the Clean Water Act, 33 U.S.C. § 1342. The SWMP expressly requires a staff review process that has been omitted from the instant project. Santa Barbara SWMP BMP 4.5.1, et seq., pages 76-84. The goal of the SWMP is the maximum practical reduction in discharge of pollutants. Grading should be minimized to avoid erosion. Id., page 78. The processing of the instant project has overlooked these issues and the City's obligation under the SWMP and Clean Water Act.

In a recent case before the Planning Commission (MST2004-00349, 226/232 Eucalyptus Hill Drive) involving the development of 2 lots each with large residences and additional units, the neighbors were concerned about the project's drainage. In response to the neighbors concerns, the planning staff requested that the applicant submit reports including, a Preliminary Stormwater Study, Infiltration at Proposed Retention/Detention Basin Report, and Slope Stability at Proposed Retention/Detention Basin Report.

There are substantial similarities in this case. Each involve a substantial amount of paving and impervious surfaces and large structures on sloped lots in the Riviera. Drainage generated on the upslope lots drains directly into developed areas below. Drainage problems have been observed in the developed areas below. Given these similarities, we request that you require the applicants to provide drainage reports and calculations prior to making a decision on the PSP or CEQA issues.

This combination of steep slope and increased runoff also add to the unusual circumstances of this project which disallow the application of a categorical exemption under CEQA. CEQA Guidelines § 1500.2(c). See Guidelines Appendix G, § IX, d-e (substantial increase in surface runoff or contributing to runoff that would exceed capacity of downstream stormwater drainage systems). Like many foothill neighborhoods, the Riviera has experienced drainage issues over the years, and runoff from the Project must cross over and under dozens of parcels before discharge.

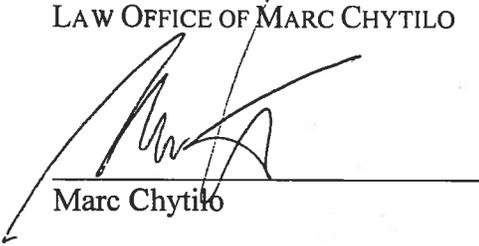
Not only can the Planning Commission not approve this project in the absence of Clean Water Act compliance, but the City's SWMP and BMP Guidance necessitate a specific review process that contemplates preparation of an environmental review document.

Conclusion

In conclusion, we request that you grant this appeal based on the issues of our February 7th appeal letter and the additional issues included in this letter and deny the Performance Standard Permit for the additional dwelling and require that a full environmental review process be initiated for the remaining Project, including drainage and runoff evaluation. The Staff Hearing Officer did not make sufficient findings in accord with the Zoning Ordinance and therefore the Performance Standard Permit should be denied.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo

Exhibits

1. Email, Kelly Brodison to Beth Ford, 3-1-11, re: standards for storm water runoff