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BEFORE THE PLANNING COMMISSION
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

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VOLUME II
ITEM 3

PARADISO DEL MARE OCEAN AND INLAND ESTATES
ENVIRONMENTAL HEARING ON THE REQUEST OF
BROOKS STREET TO CONSIDER CASE NO.5
06CDH-00000-00038; 06CDH-00000-00039;
07CUP-00000-00065; 09CDP-00000-00045;
10CUP-00000-00039; 10CDP-00000-00094;
AND TO CERTIFY THE ENVIRONMENTAL IMPACT REPORT
09EIR-00000-00003

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Transcription of Recorded Proceedings

Santa Barbara County
Engineer Building, Room 17
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December 4, 2013

Transcribed by: Cynthia Felton

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SANTA BARBARA, CALIFORNIA
WEDNESDAY, DECEMBER 4, 2013

-oOo-

CHAIRPERSON HARTMANN: We're turning to the
Paradiso del Mare. And read that into the record,
please.

CLERK: Thank you, Madam Chair.

The following is a request of Brooks Street
to consider the following; 06CDH-38, application filed
on July 27th, 2006; 06CDH-39, application filed on
July 28th, 2006; 07CUP-65, application filed on August
9th, 2007 and 09CDP-45 application filed on July 21st,
2009; 10CUP-39, application filed on November 12th,
2010 and 10CDP-94, application filed on November 12th,
2010, and to certify the Environmental Impact Report
09EIR-3, revised February 2013, Biological Resources
Section Revised August 2013, pursuant to the State
Guidelines for the Implementation of the California
Environmental Quality Act.

CHAIRPERSON HARTMANN: Thank you.

Do the Commissioners have any ex parte or
site visits to report?

Commissioner Brown.

COMMISSIONER BROWN: Yes, thank you, Madam Chair.

1 On Monday, I met with the applicant and his
2 team to talk about bio resource issues.

3 CHAIRPERSON HARTMANN: And I spoke briefly on the
4 phone with Alan McLeod, Bob Keats and Ana Citrin
5 primarily about procedures and timing, which turned
6 out to be way off. And I spoke with Ms. Citrin also
7 about the vertical access and where that is in
8 relation to the surfing area. So, I'd just like to
9 summarize briefly where we are.

10 Last time we heard the staff and applicant
11 presentations, we heard extensive public comment, we
12 had opportunity for staff and applicant to respond to
13 the public comment, and then we heard from some of our
14 County applicants, but we -- some of the response from
15 staff was abbreviated so that we could hear from our
16 County experts who are here.

17 So, what I think we're going to do today --
18 and we're kind of -- Ms. Black will correct me if I'm
19 wrong, but I think we'll hear from staff and Ms. Lieu,
20 and then we'll hear from our biologist, and then we'll
21 go to public comment. And we hope that we can focus
22 largely on the biological issues and at least not
23 repeat things that we heard last time. And then the
24 applicant will have an opportunity to respond, and
25 then we'll come back to the Commission for comment and

1 discussion.

2 So, Ms. Lieu.

3 MS. LIEU: Good afternoon, Madam Chair, members
4 of the Commission.

5 As you summarized at the last hearing, we
6 had staff presentation, applicant presentation, public
7 comment, and then we heard from the County
8 archeologist, from Will Robinson from Public Works
9 Transportation, and then also from our Hazardous
10 Materials specialists.

11 Today, I will give a response from Planning
12 staff. And we also have our biologist here today.
13 And because we received an additional comment letter
14 on the issue of hazardous materials, I did ask our
15 Hazardous Materials staff to be available from 1:30 to
16 2:30 via remote testimony in Santa Maria. I can say
17 from their perspective, most of the issues raised in
18 the letter were discussed at the previous hearing, but
19 they are available during that time period should your
20 Commission have questions for them.

21 And so, I'm just going to sort of launch
22 into some of the main issue areas that were discussed
23 at public comment and respond at the staff level to a
24 number of those. I'm going to start with -- and my
25 overview is just listed up on the screen here. And

1 I'm just going to start with seals, and just wanted to
2 go over a few points on that.

3 One important point, I think, is that we
4 need to establish the current usage at the haul out
5 when we talk about impacts to seals going forward in
6 the future and note that the most heavily used
7 existing trail lets out in the middle of the haul out
8 as it exists today. And pursuant to testimony that
9 we've received from Surfrider and from the Trails
10 Group there are up to a hundred users of the existing
11 unauthorized trail during the peak surf season.

12 So that is part of the baseline that we're
13 looking at as far as impacts to -- existing impacts to
14 seals on the site. With the proposed project, all
15 potential proposed vertical access points are further
16 east of the haul out than that existing access is.

17 One point I wanted to clarify, there was
18 comment that one of our mitigation measures requires a
19 300 foot closure on either side of the seal haul out
20 when, in fact, it requires a 900 foot closure on
21 either side of the haul out; 300 yards, 900 feet. So,
22 I think that's where the confusion came from. And
23 that is more than one of the examples presented, which
24 was the Carpinteria seal haul out. They are closed
25 750 feet in either direction.

1 I'd also like to move into discussing some
2 of the existing project conditions that we have.
3 These were -- relate to noise, lighting, construction
4 activity and were -- and also relate to some of the
5 changes to conditions that we made in response to
6 public comment that the public many not have been
7 aware of at the last hearing.

8 So, moving into noise. As established by
9 testimony from Jonathan Leech -- who's again here
10 today -- at the last hearing, the existing train noise
11 at the project site would be louder than temporary
12 construction noise and would be of a similar noise
13 profile and frequency. Therefore, it's not expected
14 that there would be noise impacts from construction to
15 the seals in excess of what's existing at the site.

16 One other item of clarification, there's
17 testimony stating a lesser distance from the
18 development envelop to the haul out. The haul out is
19 located at its closest point 326 horizontal feet and
20 55 vertical feet away from the haul out.

21 Also, we have applied noise restrictions as
22 a part of the project already that we're -- the public
23 may not have been aware of. One of those is -- and
24 I'm summarizing here -- our construction hours
25 conditions that requires construction be limited to

1 7:00 a.m. to 4:00 p.m., Monday through Friday. A
2 second noise condition that was already applied to the
3 project pertains to construction equipment, and that
4 requires that stationary construction equipment that
5 exceeds 65 decibels at the project boundaries be
6 shielded.

7 Moving onto lighting. There was some
8 discussion of lighting. We have three existing
9 conditions on the project that pertain to lighting and
10 control of lighting. Those are conditions 10, 24 and
11 92, and they overlap somewhat, but I'll give you the
12 high points. The high points of those conditions are
13 that all lighting must be dimmed after 10:00 p.m., that
14 lamps must be fully shielded such that light is not
15 directly visible beyond the area of illumination, that
16 they be of low intensity and that they be directed
17 downward.

18 There's also a requirement to follow night
19 sky lighting practices generally conforming to the
20 standards of (inaudible) Association. Finally,
21 there's a requirement for the use of motion, time and
22 light sensors to turn off exterior lights when they're
23 not in use. So this is, again, all getting to some of
24 the comments made regarding potential impacts to
25 seals.

1 In addition, just a brief summary of some of
2 the other limitations that we have on construction
3 activity to protect biological resources. The project
4 includes a requirement that during construction the
5 development envelopes are fenced, that construction
6 workers remain within those development envelopes and
7 not stray off to the bluff. For example, some of the
8 public comments received mentioned, you know,
9 disturbance to seals from construction workers perhaps
10 straying out of the areas, so it requires that
11 construction workers stay in that area. There's also
12 a requirement for the training of construction workers
13 regarding the sensitivity of the seal haul out.

14 And we also have our standard permit
15 compliance monitoring, which entails planning staff
16 going out to the site on a semi-regular basis to
17 monitor construction activities and ensure that all
18 the construction workers are complying with all of the
19 conditions applied to the project. In addition, that
20 includes a pre-construction training by permit
21 compliance staff and review of all of the applicable
22 conditions related to biology and other issue areas as
23 well.

24 I spoke about hazmat. We have our hazmat
25 specialists available if you have additional questions

1 for them up in North County.

2 And then I wanted to go into a little bit of
3 discussion of recreation and of white-tailed kites.

4 So, I'm going to pull up recreation.

5 As we all know, one of the main issues and
6 issues of concern on this project is, you know, what's
7 going to happen in terms of public access. So this
8 exhibit that I have up today we looked at in the last
9 two hearings as well, but it shows the existing and
10 past unauthorized access that occurs at the site.

11 So the main trail that we talk about when we
12 talk about potential limitations to future use is the
13 trail shown in purple, but there's also use shown in
14 this sort of pink, magenta trail shown on the
15 property. And you can see this purple trail that's
16 one of the most heavily used that occasionally splits
17 off in this magenta area, it lets out in the middle of
18 the seal haul out. And as I discussed before, during
19 peak usage that could be up to a hundred users per
20 day.

21 One other point I wanted to go over is that
22 the existing project site is fenced already, it is
23 controlled by security already, and it has signage
24 posted at the site. As a part of the proposed project
25 there is no proposal to add additional security

1 prevention measures to prevent people from undertaking
2 activities that they're not already undertaking, but
3 we did find an impact because the home will be placed
4 on top of a portion -- you can see here the Ocean
5 Estate will be placed on top of a portion of the
6 existing trail.

7 And when we're looking at the issues of
8 temporal loss and cost of construction, I think it is
9 important to consider the fact that the project is not
10 proposing additional restriction beyond what's already
11 existing at the site. Another important point to
12 consider is the fact that additional measures could be
13 put in place today without -- with -- outside of the
14 proposed project.

15 There was a question about the cost of the
16 bridge and the stairways and the feasibility of the
17 stairways. And we have -- I can go into these numbers
18 in as much detail as you'd like or pass this around.
19 We have estimates for the trails, construction of the
20 Coastal Trail, estimates for construction of the
21 bridge crossing the railroad tracks, and then
22 estimates of the cost of each of the potential
23 vertical access points to the beach.

24 And we also included with that -- have a
25 draft analysis from Penfield & Smith that discusses

1 the viability of each of those vertical access points.
2 So this is something that's been in the record and is
3 discussed in the recreation section of the EIR, but we
4 do have numbers for that should your Commission want
5 more detail.

6 Lastly, on the issue of recreation, I wanted
7 to mention the fact that with implementation of the
8 trails, despite the fact that they may not be
9 constructed immediately, it would provide safe, legal
10 access to the property. Whereas, today those
11 accessing the site park across the freeway over here
12 and over here run across the freeway with their
13 surfboards and access the site in an unauthorized
14 manner.

15 Accepting the offers to dedicate on this
16 project would provide legal access to the property for
17 the long-term, it would provide access for a greater
18 portion of the public, a greater variety of users and
19 greater -- users with greater -- lesser physical
20 ability.

21 Last issue I wanted to discuss was the issue
22 of white-tailed kites. For the most part, I'm going
23 to ask our biologist, John Storrer to discuss white-
24 tailed kites and some of the issues that were brought
25 up at the last hearing. I will also ask or allow your

1 Commission to ask John Davis to discuss the mitigation
2 plan for the property in more detail, and specifically
3 the goals of that plan to increase foraging habitat
4 for white-tailed kites.

5 One last thing that I wanted to clarify,
6 there was public testimony regarding the comment
7 received from the Coastal Commission. And on this
8 project we've had a number of conversations with the
9 Coastal Commission, specifically about recreation and
10 trails on the property.

11 And my understanding of their comment was
12 that they fully believe that trails are a compatible
13 use within E.S.H. areas, Environmentally Sensitive
14 Habitat areas. They were -- and based on my
15 understanding of their comment, they were not
16 questioning the analysis of our white-tailed kite
17 analysis, except to say that they felt that perhaps we
18 were finding more impacts to kites than there actually
19 would be from trails.

20 So I think it was presented in the opposite
21 of that. And I -- based on my discussions with them,
22 my understanding is that they believe that trails are
23 a compatible use. And that coincides with if you look
24 at the Coastal Policies, the Coastal Policies
25 specifically allow for recreational use within habitat

1 areas.

2 So with that, I'd like to direct it back to
3 your Commission or to Mr. Storrer or Davis to go into
4 the biological resource issues. Thank you.

5 CHAIRPERSON HARTMANN: Why don't we have Mr.
6 Storrer? He waited so long last time. (Laughs.)

7 COMMISSIONER BROWN: I have a question for
8 Nicole.

9 CHAIRPERSON HARTMANN: Okay, quick question and
10 then we'll --

11 COMMISSIONER BROWN: Okay, quick question.

12 Nicole, you were speaking about your
13 discussions with the Coastal Commission regarding rec
14 and white-tailed kite. Did you discuss the harbor
15 seals and vertical access points and the issues with
16 that?

17 MS. LIEU: Madam Chair. Commissioner Brown.

18 Sorry. (Laughs.) Not in -- I don't think
19 specifically.

20 COMMISSIONER BROWN: Okay.

21 MS. LIEU: And definitely not recently.

22 COMMISSIONER BROWN: Okay. Fine. All right.
23 That's good.

24 MS. LIEU: Most of our discussion had to do with
25 the Coastal Trail.

1 COMMISSIONER BROWN: Okay. All right. Thank
2 you.

3 CHAIRPERSON HARTMANN: I think we're ready for
4 Mr. Storrer. And did you want to make a few remarks
5 and then have questions or start peppering you with
6 questions right away?

7 MR. STORRER: (Inaudible.)

8 CHAIRPERSON HARTMANN: Okay.

9 MR. STORRER: Thank you, Madam Chair and Members
10 of the Commission.

11 What I'd like to do is briefly summarize the
12 regional and site specific status of the white-tailed
13 kite as we know it for this property and then respond
14 to a few of the specific points that were made at the
15 last hearing with regard to white-tailed kites. And
16 then I'd be happy to try to answer any remaining
17 questions that you might have.

18 The white-tailed kite is listed as fully
19 protected under the California Fish and Game Code, and
20 there are specific policies in our local Coastal Plan
21 that deal specifically with kite nesting, roosting and
22 foraging habitats. Kite populations are subject to
23 fluctuation from year to year, presumably in response
24 to density of a very narrow prey base. They have a
25 very fine-tuned selective prey base that consists

1 mainly of diurnally active small rodents, in
2 particular California vole. We'll probably hear more
3 about California vole.

4 The information that we have on white-tailed
5 kites on this property -- on the Paradiso property
6 dates back to the mid-1990s. Systematic surveys for
7 white-tailed kites covering both the breeding and non-
8 breeding seasons have been done since 2002 through the
9 last breeding season six of those eleven years. So we
10 have surveys that were done by professional biologists
11 intermittently, but over that span of eleven years it
12 gives us a reasonable profile of how the property has
13 been used during that time by white-tailed kites.

14 We have two successful nesting records for
15 white-tailed kite on the property during that 11 year
16 span in 2002, and then again, as we heard, in 2013.
17 Interestingly, in both of those years -- 2002 and 2013
18 -- there were second pairs of white-tailed kites on
19 the property that went through the initial stages of
20 courtship and nest construction, but the nests, in
21 both of those cases, were determined to be
22 unsuccessful. So, we have two records of successful
23 fledging.

24 The information that we have from those six
25 years of study suggest that the property is used

1 throughout most of the year -- at least intermittently
2 -- for foraging. There's a good deal of habitat for
3 these diurnally active rodents and they are seen
4 frequently on the property, you know, both in the
5 course of informal visits and also during these
6 systematic studies.

7 It also appears that the site might be
8 important near the end of the breeding season. We
9 have repeated records of both juvenile and adult birds
10 using the property for foraging, and that suggests
11 that, as the nesting season reaches its close, the
12 birds typically expand their nesting territories
13 perhaps having exhausted the immediate prey base. And
14 then, of course, with the young an additional demand
15 on the resource they're expanding their territories.
16 And they are frequently seen on the Paradiso property
17 during late summer and early fall in particular.

18 A few specific points. Local Coastal Plan
19 Policy requires setbacks from nesting areas. No
20 prescriptive development setback is required or
21 recommended by the policy. I have seen setbacks
22 applied in the coastal zone of 100, 300 feet from
23 raptor nests as examples. White-tailed kites have
24 been recorded as nesting as close to 74 feet from
25 occupied dwellings, and there are anecdotal accounts

1 of them nesting even closer, though that is not
2 typical.

3 Regarding nest site fidelity -- the birds
4 returning the same location from year to year -- kites
5 tend to be loyal to nesting territories rather than
6 specific nest trees. There are exceptions -- as we
7 heard during the public testimony -- where birds have
8 been seen repeatedly using the same tree for nesting.
9 We only have four documented cases on this property of
10 birds actually constructing nests, so our data is
11 fairly limited there. I believe that potential nest
12 trees -- suitable nest trees that is -- are not a
13 limiting factor on this site, although that point has
14 been indirectly contradicted in public testimony, I
15 should point out.

16 The suggestion has been made that habitat
17 restoration and enhancement will not benefit wildlife
18 populations. Now, the Conceptual Restoration and
19 Management Plan is an integral part of the biological
20 mitigation and has specific elements that are directed
21 towards white-tailed kite mitigation, so this is
22 important. In response to that, I would suggest that
23 an implicit, if not an expressed goal of every
24 restoration project is to provide functional habitat
25 for wildlife. In this case, the plan has elements

1 that are designed to improve the prey base for white-
2 tailed kites, and other raptor species as well, by
3 increasing conditions -- or improving conditions
4 rather that will hopefully improve the prey base.

5 Now, this will undoubtedly prove a
6 challenging endeavor, because it involves several
7 dynamic factors. As I mentioned, both vole
8 populations and kite populations are subject to
9 seasonal trends in weather, you know, site specific
10 availability of habitat and its condition. But the
11 specific treatments that are described in the
12 Conceptual Restoration Plan -- and I should mention
13 it's not been finalized yet -- the treatments and
14 methods have been successfully implemented in other
15 projects in the region -- in the region, and I think
16 they have a reasonable likelihood of realizing the
17 plan's objectives.

18 The plan also contains an adaptive
19 management component, and that is an element that
20 allows for periodic assessment and modification of
21 restoration techniques to attain those goals. So the
22 term adaptive management has been around just a few
23 years, but as long as I've been doing restoration for
24 several years what it really means is things didn't
25 exactly turn out like you expected so you need to

1 continuously reevaluate and then change your approach
2 if necessary.

3 So, that is really my summary. And I would
4 be happy to respond to any specific questions that you
5 might have.

6 CHAIRPERSON HARTMANN: Commissioner Brown.

7 COMMISSIONER BROWN: Thank you.

8 As I told the applicant earlier today, I
9 feel like I've been studying for an oral exam in
10 white-tailed kite. It's been an interesting journey.
11 So I do have quite a few questions, and I do thank Mr.
12 Storrer and Mr. Davis. I had an interesting
13 conversation with him on Monday.

14 My question to Mr. Storrer is there's been
15 discussion -- and it's interesting to see sort of the
16 breadth of thinking about this efficiency of the
17 setback of the coastal residence from this tree -- the
18 nesting tree for this year -- with the applicant
19 saying it's been sufficient, you've saying the 75 feet
20 or 100 or whatever is indefensible and with another
21 local biologist, Mr. Holmgren saying well, this needs
22 to be much greater. So what is it? Where -- what
23 really is the -- is there an answer or is it just as
24 you've indicated, that these kites are variable and it
25 depends?

1 MR. STORRER: Madam Chair. Commissioner Brown.

2 I don't know if there's an answer, but I
3 certainly will attempt one. It could be reasonably
4 argued that a further setback would be more beneficial
5 in any case; the further the better. This property,
6 as you know, is highly constrained by various factors,
7 including other resources, geology, the cliff, et
8 cetera. So, it is a highly constrained piece of
9 property.

10 As far as the 100 feet -- it's 100 feet from
11 the structure and it's 75 feet from the driveway,
12 right?

13 COMMISSIONER BROWN: Right.

14 MR. STORRER: I think that is the minimum. Even
15 though I mentioned that there are accounts of kites
16 nesting closer to occupied dwellings, you certainly
17 wouldn't chose the lower range of your -- range of
18 distance that the kites prefer as your setback. So, I
19 think that 100 feet is the minimum that would
20 logically be argued as sufficient.

21 I would place this in context by saying that
22 I think this is more a policy conflict than it is a
23 biological conflict and see if I can explain that. As
24 I mentioned, I don't think that suitable nest sites in
25 proximity to foraging area -- which is essential what

1 the kites require for successful breeding. I don't
2 think these trees are limited on this property.

3 COMMISSIONER BROWN: Right.

4 MR. STORRER: I think that it is unlikely that
5 the kites would choose to reside in that same tree if
6 the dwelling were constructed -- if it were 100 or 200
7 feet -- because they have other opportunities on the
8 property to do so. So that would be my answer, if I
9 hopefully somewhat answered it -- your question.

10 COMMISSIONER BROWN: Okay.

11 The other issue for me is -- this is another
12 question that Mr. Holmgren brought up -- is about the
13 habitat restoration and by the mere fact of many of
14 the activities that are required to restore the
15 habitat for the kite it's going to impede or destroy
16 the prey base. And just because you're weeding,
17 mowing, which is going to be affecting any animals
18 that might be living there -- so is there some way to
19 -- and you've indicated adaptive management as a
20 component of this plan, but is there some way to
21 minimize the disruption to the prey base while they're
22 trying to restore it?

23 MR. STORRER: Madam Chair. Commissioner Brown.

24 That is an expressed intent of the
25 Conceptual Mitigation Restoration Plan. As to how

1 that would be accomplished, restoration by its nature
2 is somewhat intrusive. Obviously, you have human
3 activity, you have planting, you have irrigation. I
4 think you have to take a long-term perspective in
5 dealing with restoration.

6 It may be that in five years or even ten
7 years that there's this sort of intrusive disruptive
8 influence, but in the long-term you're trying to
9 improve the habitat. And that's really what's
10 required if you want to do seeding and weeding and so
11 forth.

12 As far as the mowing, the mowing would be
13 limited to the areas of dense mustard, which infest a
14 good portion of the property. And I think it could be
15 reasonably argued that the mustard doesn't provide
16 good habitat for the prey based -- that is the vole --
17 and it certainly doesn't provide accessibility for
18 kites if they are in that mustard field. So the
19 mowing would take place twice a year, and it would be
20 fairly intrusive.

21 Again, as to the other elements of the
22 restoration plan, I don't think they would be so
23 intrusive as not to -- as to deter re-colonization of
24 those areas. I think the contrary would be true.

25 COMMISSIONER BROWN: And the monitoring period of

1 three to five years, I think some have suggested that
2 maybe that isn't sufficient to really get an
3 understanding that the -- what restoration has been
4 completed is sufficient to restore the prey base and
5 to encourage the voles to live there. Do you have any
6 thoughts about that?

7 MR. STORRER: Madam Chair. Commissioner Brown.

8 Yes, I do have some thoughts about that.

9 The five-year term of restoration
10 maintenance I think is sort of a preliminary timeframe
11 objective. And I think the final plan should reflect
12 that the plan should be -- maintenance and monitoring
13 should be continued until performance standards have
14 been achieved. Otherwise, you have a -- you would
15 have a residual impact. And you have to satisfy and
16 the goals and objectives of the mitigation plan.

17 I think that the tricky thing will be in
18 establishing a good measure of whether the treatment
19 has been successful in restoring vole populations and
20 kite populations. And the reason for that is, again
21 to reiterate, that the voles have a highly fluctuating
22 population biology, as do the kites. So it would be
23 very difficult, I think, to demonstrate in a five-year
24 term whether the specific activity -- the specific
25 restoration activity that you were embarking on was

1 either beneficial or detrimental to kites.

2 But I think some qualitative standards could
3 be developed. And I don't have any specific answers
4 to what those are right now, but I think that research
5 would be beneficial in that regard.

6 COMMISSIONER BROWN: And that's something that
7 the applicant in devising the plan could and should
8 incorporate into the plan from what I take here.

9 MR. STORRER: Madam Chair. Commissioner Brown.
10 Most definitely.

11 COMMISSIONER BROWN: Okay. So rather than have
12 sort of an unending period where the applicant just
13 has an open checkbook about to -- for monitors to go
14 to see whether or not there's been successful
15 restoration, is there some -- is there a way that we
16 can rewrite the condition that would be sort of more
17 -- that would get more to your point rather than just
18 have this very arbitrary endpoint three to five years?

19 MR. STORRER: Madam Chair. Commissioner Brown.

20 I think that that could be done in the
21 context of finalizing the restoration plan. I don't
22 know that the mitigation measure would necessarily
23 need to be rewritten. I think that every restoration
24 plan shouldn't have an arbitrary end date on it.
25 Again, I think it should -- there should be some clear

1 performance standards, whether they be based on
2 vegetative density or a proportion of native versus
3 non-native plants, height of trees in the case of
4 oaks, for example. I think that the restoration
5 efforts should be continued until those objectives
6 have been met.

7 And as I suggested, I don't have a really
8 concise answer for you as to how to go about measuring
9 the functional aspect with respect to voles and kites.

10 COMMISSIONER BROWN: So have you seen, in your
11 experience, where these plans have gone on beyond sort
12 of this period of time that's suggested in these
13 conditions -- three to five years -- where it's taken
14 six or seven?

15 MR. STORRER: Madam Chair. Commissioner Brown.

16 I've seen projects that have gone beyond
17 five years, yes, before they achieved the restoration
18 standards, yes.

19 COMMISSIONER BROWN: And the issue of the Coastal
20 Trail and -- in the white-tailed kite territory,
21 because the Coastal Trail is going to be on the ocean
22 side where most of the trees are for the white-tailed
23 kite perching, I presume, and nesting also there, the
24 conditions -- and I don't have it in front of me --
25 but for, I guess -- and Nicole will have to refresh my

1 memory, because, I'm sorry, I didn't review this last
2 night -- about trail closures or no trail closures.
3 As they're written, are they helpful to the kites or
4 not -- or could they be tightened so they are more
5 helpful to the kites in terms of any nesting that
6 might be going on there?

7 MR. STORRER: Madam Chair. Commissioner Brown.

8 There are two useful comparisons with
9 respect to looking at the long-term impacts of trail
10 use on white-tailed kites in our region, and one is
11 More Mesa and the other is Ellwood Mesa. Those are
12 large coastal properties that have received a great
13 deal of passive trail use, recreational use in the
14 past, and they have historic documented record of
15 kites nesting there almost every year. Not every
16 year, but more frequently than this property, for
17 example.

18 The kites tend to be fairly tolerant of
19 passive recreation, so vehicles, concentrated things
20 like BMX tracks would be detrimental to kite nesting.
21 The seasonal -- well, the mitigation measure basically
22 requires an annual survey and either rerouting or
23 seasonal closure of trails. A difficulty that we're
24 going to encourage here is that, as I mentioned
25 before, the kites tend to be more faithful to nesting

1 territories. And in some cases they're chasing these
2 prey populations that also tend to be not very
3 predictable. So, they may not use the same tree from
4 year to year. And that's going to pose a predicament,
5 because you're going to have to look at each year and
6 see where the birds are nesting.

7 Birds also complicate things by often times
8 building more than one nest when they first get
9 started and then presumably select the one they like
10 based on factors like disturbance and proximity to
11 prey and so forth. So, I think the survey is a good
12 idea. I can see some logistical challenges in trail
13 closure -- and I'm sure we'll hear some of that from
14 the public testimony -- but I think that -- but that's
15 a reasonable approach to take.

16 COMMISSIONER BROWN: Okay. And as I recall, the
17 trail -- the monitoring period, I think, is five years
18 to survey to see whether -- how the kites are getting
19 along with the humans, so to speak. So would that --
20 just because their behavior is sort of variable, do
21 you think that's a sufficient time to sort of assess
22 the interaction of the trail users with the kite
23 population there?

24 MR. STORRER: Madam Chair. Commissioner Brown.

25 I think that's a reasonable period of time.

1 But again, that's a difficult question because, as I
2 mentioned, you know, this is an unpredictable animal
3 that we're dealing with. It really speaks to what
4 people commonly refer to as acclimation, you know,
5 will the kites acclimate to a certain level of human
6 activity? And it would, of course, depend directly on
7 the type of activity and its level, but again, they're
8 generally tolerant of passive recreation.

9 COMMISSIONER BROWN: Okay. Great. Well --

10 MR. STORRER: Whether five years is sufficient, I
11 think that's a reasonable time to certainly take an
12 evaluation of whether this is a workable, effective
13 approach.

14 COMMISSIONER BROWN: And let's say the evaluation
15 goes on -- and I guess that would be the County's --
16 well, it would be a biologist from the County, whether
17 it's the County's biologist or Mr. Storrer or somebody
18 else hired by the County, I'm not sure how that would
19 work. But what would happen if the biologist said,
20 "Well, you know, it's not really working," whatever
21 the standards are that they'd use, what would
22 transpire then? Nothing? We'd just -- the five-year
23 period ends, and what happens?

24 MS. LIEU: Madam Chair. Commissioner Brown.

25 I'll allow John to answer that as well, but

1 the condition requires monitoring surveys for three to
2 five years. And so what we're talking about is --
3 I'll pull up an exhibit. There may be a better one,
4 but -- so what we're talking about is the trail will
5 be going along the Coastal Estate and will be going
6 past a number of the trees that are on the site. And
7 it's -- again as we've discussed, kites tend to be
8 tolerant of recreational use, as has been shown on
9 More Mesa.

10 And our expectation is that upon the
11 establishment of continued use for three to five years
12 by the public -- and again, this is not a biological
13 term, but my understanding is that kites sort of have
14 personalities. So they'll, you know, be in the area,
15 and if they're comfortable nesting in an area that is
16 being used -- like More Mesa -- more heavily by trail
17 users, they will nest in that area and will not be --
18 regardless of being, you know, 50 feet, 20 feet from a
19 trail -- they'll be -- by the fact that they've nested
20 in that area would not be expected to be disturbed.
21 They'll chose nests in areas that they're comfortable
22 with.

23 So the idea of the three to five years of
24 surveys -- it's not just surveys. It's also -- it's
25 three to five years of potential trail closures to

1 account for that period of time to prevent impacts to
2 kites. And it also allows the County biologist to use
3 other methods -- the biologist working for the County
4 to use other methods to try and avoid -- we talked
5 about adaptive management -- to try and avoid any
6 impacts as well.

7 But overarching all of this is, again, the
8 data that we've seen that trails can be of compatible
9 use within this type of sensitive area. But again, we
10 did want to account for the fact that if it's expected
11 that kites move from tree to tree, we wanted to
12 account for that fact in the -- in our condition as
13 well.

14 COMMISSIONER BROWN: Okay. All right. Thank you
15 Mr. Storrer and Madam Chair for your indulgence in
16 letting me ask these questions.

17 I'll have more on seals. Thank you.

18 CHAIRPERSON HARTMANN: Okay. I had a few.

19 We heard that there were six fledglings. Is
20 that highly unusual?

21 MR. STORRER: Madam Chair.

22 Yes, that's -- as far as I know, that's
23 unprecedented, so it's highly unusual.

24 CHAIRPERSON HARTMANN: And we had someone from
25 the Audubon Society talk about a nesting area is more

1 than the tree; it's an assemblage of factors. And
2 that he went so far as to say we should be looking at
3 the assemblage of factors that allowed for such an
4 unprecedented successful nest in that point -- in that
5 area. Could you respond to that at all?

6 MR. STORRER: Madam Chair.

7 Yes. I agree that the nesting area, as it's
8 referenced -- nesting area could be defined as -- on
9 many different levels. It would certainly include the
10 nest tree and any protective area around that. It
11 could also include proximate foraging habitat. So a
12 nesting area can be defined in a lot of different
13 ways, but I would agree with the commenter that, you
14 know, it's a complex thing.

15 Now, as to the fledging of the six young
16 from this particular nest, I would be cautious about
17 drawing conclusions about that. I think it's
18 fascinating, I think it's remarkable, but I don't know
19 that it reflects any particular attribute about this
20 property. You could also look at the fact that the
21 second pair apparently failed completely.

22 So, you know, they were successful, yes, but
23 it might speak more to the individual fitness and
24 experience of this particular pair of birds than -- I
25 think it's a bit of a reach to make a conclusion about

1 the habitat or the prey resource based on this one
2 event.

3 CHAIRPERSON HARTMANN: And you said that kites
4 adapt pretty well to passive recreation. How about
5 the activities in a household; dogs, cats, lights,
6 noise, vehicles, house and guest house, and operating
7 the orchard? Any thoughts about that?

8 MR. STORRER: Yes, Madam Chair, I have a couple
9 of thoughts.

10 I think, on one level, we're talking about
11 tolerance. You know, the species has a certain
12 tolerance that's been demonstrated that it does --
13 it's fairly compatible with agriculture and some level
14 of residential and recreational use. I think
15 acclimation refers to specific birds probably and, you
16 know, might have to do with their individual
17 tolerances, if you will.

18 As to how close -- the More Mesa study was
19 done in 2010 -- it was commissioned by the County of
20 Santa Barbara -- gave some use information on that.
21 And that's where I drew my figure of 74 feet is the
22 closest that they had recorded. Now, Ms. McCurdy (ph)
23 here had kites nesting in her yard one year, which
24 were much closer than 74 feet, but that is unusual.

25 I believe that with the More Mesa study,

1 which had a pretty large sample size, the majority of
2 nest locations were within 300 feet of structures. So
3 there again, I think it's going to depend on the type
4 of activity. You know, you could suggest that an
5 apartment building might be more disruptive than a
6 single home, but certainly it would be considered a
7 potential source of disturbance with lighting and pets
8 and noise and things. But again, the species tends to
9 be fairly tolerant of that.

10 CHAIRPERSON HARTMANN: I'm just curious -- cats?
11 Are kites too big for cats to be a problem for?

12 MR. STORRER: Madam Chair.

13 I don't think any bird is too big for a cat
14 to be a problem, (laughs) but maybe great horned owls.

15 But in answer to your question, they
16 typically nest in the top of a quite tall tree. So 30
17 feet would be a typical nest. A cat wouldn't be able
18 to scale that high to get into the nest, but if, for
19 example, the fledgling were to fall out of the nest a
20 cat could certainly catch them and kill them. Yeah.

21 CHAIRPERSON HARTMANN: I just want to say that,
22 because cats are responsible for bird decline and
23 extinction, probably one of the greatest causes,
24 right? So I just wanted to get that on the record for
25 broad public education purposes.

1 MR. STORRER: Thank you, Madam Chair, I'm glad
2 you did. (Laughs.)

3 CHAIRPERSON HARTMANN: I had one final question,
4 and that is on this topic. You said that there was a
5 biological conflict or not and a policy conflict.
6 Could you elaborate what you mean by that?

7 MR. STORRER: Yes, Madam Chair.

8 What I was referring to is that the policy
9 is certainly well-intended and it's intended to
10 protect nesting locations, but a prescriptive setback,
11 even one that's designed for a specific case with
12 respect to kites, I don't think -- I think it's more
13 of an issue of trying to conform to a particular
14 policy.

15 And what I mentioned before in this case --
16 in this context where you have lots of good foraging
17 habitat, what appear to be many suitable nest trees, I
18 don't think that the loss of this particular tree is
19 going to eliminate kites from using this property
20 again. I think they'll simply move to another tree,
21 and I think they would do that if the setback were 200
22 feet. I just -- I mean, I just think it's reasonable
23 to think that they would choose a more remote location
24 so long as it were proximate to good foraging habitat.

25 CHAIRPERSON HARTMANN: Commissioner Blough.

1 COMMISSIONER BLOUGH: Yeah, is it safe to
2 conclude that it's more important that we talk about
3 the restoration for the prey base? I mean, it seems
4 to me that one of the reasons that the bird would nest
5 in your backyard or 75 feet away or 25 feet away is
6 more a matter of where the prey base is.

7 I mean, if you restore the habitat to where
8 the prey base doubles, I think then you'd probably
9 increase the likelihood of a nest occurring someplace
10 near that area because that's -- isn't that the
11 driving force for the bird -- is how close it might be
12 and if there's adequate food for him and -- or the
13 bird and the fledglings? Do I have that right?

14 MR. STORRER: Madam Chair. Commissioner Blough.

15 Yes, I would agree entirely with that. I
16 think that the prey base is the, you know, essential
17 factor. Now, obviously they need nest trees. They
18 need a substrate for placing their nests that's
19 somewhat protected, but I think the prey base is the
20 most essential element.

21 COMMISSIONER BLOUGH: Right. So whether -- and
22 the other thing is -- correct me -- staff, correct me
23 if I'm wrong here, but if for some reason that trail
24 were to be a problem three years, five years, twenty
25 years from now, the trail is under the control of a

1 County. So, the County could make whatever change to
2 that trail they wanted to, close it, restrict it,
3 whatever they want to do. It doesn't matter whether
4 it's three years, five years or twenty years.

5 So it seems to me what the important thing
6 to look at is the restoration plan, making sure it
7 gets done to your satisfaction or to some biologist's
8 satisfaction to give the prey base the best chance of
9 having the right population there, and that's the best
10 we could do. And if that, for some reason, doesn't
11 work because of the trail location or -- then you can
12 deal with that later as a County. Am I -- do I have
13 that right?

14 MR. STORRER: Madam Chair. Commissioner Blough.

15 In essence, yes, I think you have it right.

16 COMMISSIONER BROWN: Madam Chair.

17 I just have one more question from my list,
18 if I may.

19 CHAIRPERSON HARTMANN: Of course.

20 COMMISSIONER BROWN: We understand that there's
21 going to be a conservation easement on this property,
22 and I'm wondering -- this is a private agreement
23 between the property owner and this nonprofit, so we
24 don't really know what's going to be in it. And I'm
25 just wondering if it would be helpful to know perhaps

1 what sort of standards they're going to have for the
2 nonprofit in terms of monitoring to ensure that this
3 habitat is maintained?

4 I mean, it seems like it's totally out of
5 our control that once this habitat is done and we're
6 ten years down the road it could -- I wouldn't imagine
7 that it would deteriorate, but I think this particular
8 nonprofit is -- if it's the one I'm thinking of that's
9 going to be taking -- be holding the easement that
10 wouldn't happen. But does there need to be some sort
11 of connection between the idea that this is an
12 important habitat for white-tailed kite prey and what
13 is considered in the easement?

14 MR. STORRER: Madam Chair. Commissioner Brown.

15 The nonprofit land entities that I'm
16 familiar with do an annual inspection assessment of
17 conformity with all the management goals and
18 restrictions.

19 COMMISSIONER BROWN: Oh, for the conditions of
20 the project.

21 MR. STORRER: Beg your pardon?

22 COMMISSIONER BROWN: With the conditions of the
23 project? Is that --

24 MR. STORRER: Not with -- necessarily with the
25 conditions of the project. Typically, they are

1 tenants of a management plan. In this place -- in
2 this case it would be -- presumably be the restoration
3 plan or some derivative of the restoration plan.

4 COMMISSIONER BROWN: Oh, okay.

5 MR. STORRER: So, for example, let's use the Land
6 Trust for Santa Barbara County as the entity I'm most
7 familiar with. They have an agreement with the land
8 owner to, you know, hold the conservation easement,
9 and the land owner is obliged legally to abide by
10 various tenets of the agreement. And the Land Trust
11 does periodic -- I believe in most cases it's an
12 annual assessment. And it's not necessarily a
13 detailed, quantitative survey, but it's certainly an
14 on ground inspection to verify that they're conforming
15 with the tenets of the agreement.

16 CHAIRPERSON HARTMANN: Do we -- oh, Commissioner
17 Ferini.

18 COMMISSIONER FERINI: On the fledglings -- so
19 you've done -- you have two years of success -- two
20 and thirteen. Then is there a study that goes on to
21 see the mortality or the success rate of the
22 fledglings?

23 MR. STORRER: Madam Chair. Commissioner Ferini.

24 Not in this case. There was no follow-up
25 done. Generally, in most animal populations, it's

1 quite high from seeing a bird fledging to year one.
2 You know, the rate of attrition from a population
3 standpoint is quite high.

4 COMMISSIONER FERINI: Right.

5 MR. STORRER: As to how many birds are recruited
6 into the adult population that would depend on several
7 factors, not the least of which would be the prey base
8 that we've been talking so much about and, you know,
9 predators and competition from other species.

10 And just as a side, interestingly, the nest
11 in 2002 produced five young, which is also -- until
12 2013 was, you know, equaled the record. So, yeah,
13 it's interesting.

14 COMMISSIONER FERINI: And then is there any
15 concern with the location -- so we have the freeway
16 and the railroad tracks -- as far as affecting the
17 mortality of the population that we're trying to
18 enhance?

19 MR. STORRER: Madam Chair. Commissioner Ferini.

20 Yes, there are records of kite collisions
21 with vehicles. In fact, I found road kill white-
22 tailed kites all along the freeway along this property
23 before in past years.

24 COMMISSIONER FERINI: Really.

25 MR. STORRER: So I don't know how high it is, but

1 I know with several animals -- and this is one in
2 particular -- this bird in particular -- the freeway
3 median strip and the road shoulder gives them fair
4 accessibility to prey. So they can -- you know,
5 usually it's mowed by Caltrans -- so you often times
6 see them foraging along the highway. And they can
7 fall prey to vehicle collisions, yeah, but the train
8 I'm not sure. But certainly vehicles.

9 COMMISSIONER FERINI: Are they migratory? Do
10 they go south?

11 MR. STORRER: Not necessarily migratory, not in
12 our area. They certainly disperse and broaden their
13 territories, and they have often times gathered in
14 communal roosts in the wintertime. So they have very
15 interesting forms of behavior, but -- and they may
16 even move inland quite a ways. But I don't think they
17 -- in the traditional sense of going to Mexico and --
18 they don't.

19 COMMISSIONER FERINI: So would they hunt an area
20 out? After they've eaten the voles that are available
21 then do they just pick up and go somewhere else for a
22 while?

23 MR. STORRER: Expand their territory, certainly.
24 I would expect with most birds of prey that probably
25 happens during the nesting season, because they're

1 hunting out all the resources. They're picking the
2 low-hanging fruit, right? They're exhausting the
3 resource closest to the nest tree. And then there's
4 an energy budget trade off, right, for how far you
5 have to go to feed the kids, and the kids keep getting
6 bigger and require more food. And so, I think they
7 probably do at least deplete, if not exhaust the prey
8 base and they have to move.

9 And I think it's anecdotal evidence, but I
10 mentioned that in several years we see -- or we know
11 through surveys that kites did not nest on the
12 Paradiso property. We see adults with juveniles or
13 juveniles by themselves on this property. So, they're
14 probably in search of a more plentiful prey base.

15 COMMISSIONER FERINI: They're probably in some
16 type of a rotation on an area (inaudible).

17 MR. STORRER: I think that's highly possible,
18 yeah.

19 COMMISSIONER FERINI: Okay. Thank you very much.

20 MS. BLACK: Madam Chair.

21 CHAIRPERSON HARTMANN: Yes.

22 MS. BLACK: I hate to break in, but I think our
23 Hazardous Materials people are going to leave if the
24 Commission doesn't have any questions.

25 CHAIRPERSON HARTMANN: Okay. I --

1 MS. BLACK: We're not even positive they're
2 there, because we wouldn't be able to see them. But
3 if you don't then --

4 CHAIRPERSON HARTMANN: No.

5 Doctor Kram's most recent letter did suggest
6 some things that he thought out to be incorporated, I
7 think, into conditions; evaluate the groundwater
8 conditions, test well seals for possible methane leaks
9 and determine lateral and vertical extent of
10 contamination within the SDE. So I guess I'd like to
11 hear briefly -- if they're there -- before they go
12 whether that's reasonable.

13 UNIDENTIFIED MALE: Madam Chair.

14 Can you hear me?

15 CHAIRPERSON HARTMANN: Yes.

16 UNIDENTIFIED MALE: Okay. Good.

17 I can stay around more -- longer if you need
18 me to. So, I'm not necessarily -- I don't necessarily
19 have to go right now. If it would be better for you
20 to continue with your testimony with Mr. Storrer, I
21 can hang around for another hour or so.

22 CHAIRPERSON HARTMANN: Could you answer that
23 relatively briefly? I think that's the main question
24 we would have for you. And we'll probably have a lot
25 yet on seals. So if you're willing to go now, that

1 would be great.

2 UNIDENTIFIED MALE: Yes.

3 CHAIRPERSON HARTMANN: And then you can be done
4 with us.

5 UNIDENTIFIED MALE: Yes. Madam Chair. Members
6 of the Commission.

7 I have reviewed Mr. Kram's latest letter
8 dated November 25th, and I would say that his concerns
9 -- as Ms. Lieu stated earlier -- have been -- were
10 answered in our previous testimony before you. But in
11 terms of what he's asking for in terms of ground water
12 monitoring, based on what we've seen at the site, with
13 the lack of groundwater within 75 feet of the surface,
14 we do not consider at this time groundwater to be an
15 issue.

16 He also points out at looking at the
17 ravines. My thoughts on that are that there was
18 likely no actual historic work that would have been
19 done in the ravine that would have caused
20 contamination to be in that area. So that typically
21 -- you know, in an investigation like this you look
22 for where you have likely sources of contamination.
23 That is something that we typically would not look at
24 because of its location of having a lack of historical
25 activity in that area.

1 In terms of his request for testing the well
2 seals, I would like to, again, point out that well
3 standards for the oil wells have not changed since the
4 1980s. And these wells were installed or were
5 abandoned in 1996 and were not shown at that time to
6 have any leaks at that point, so we consider these
7 wells to be properly abandoned at this point. We have
8 no indication that there would be any reason why they
9 would be leaking since they were properly abandoned to
10 current standards, and these standards are current as
11 of today.

12 And then in terms of his request to
13 determine the lateral and vertical extent of
14 contamination at the southern development envelope, I
15 took a look at the previous data, and it looked like
16 we have over 45 soil borings, which were drilled in
17 this area, which resulted in the collection of 230
18 soil samples, which were sampled -- which were
19 analyzed for various constituents of concern that he
20 brings up. And based on that information that we
21 have, we feel that in the southern development area
22 that the contamination has been appropriated
23 delineated vertically and laterally at this time.

24 So, that would be my responses.

25 CHAIRPERSON HARTMANN: Thank you.

1 Are there any questions that the Commission
2 has?

3 Commission Blough.

4 COMMISSIONER BLOUGH: Yeah, just a question. I
5 mean, I'm pretty familiar with oil wells being
6 abandoned and building projects next to them. In
7 fact, there's one 25 feet at my property abutting the
8 rear of my house. (Laughs.)

9 I know there are hundreds of wells in Santa
10 Maria that have been capped and lots of property that
11 are within -- excuse me, that are just outside the ten
12 foot setback, which seems to be the standard for any
13 structure near an abandoned oil well. Have you ever
14 seen any oil well abandonment where there was a
15 problem with a structure ten feet away from the
16 abandoned oil well?

17 UNIDENTIFIED MALE: Madam Chair. Commissioner
18 Blough.

19 Typically, we have seen -- in the Santa
20 Maria Valley they have gone back in and re-abandoned
21 wells, but these have been wells that were abandoned
22 prior to the 1980s. So, these would have been wells
23 that were done back in the 1950s to a lesser standard.

24 So, yes, we have seen them, but my
25 understanding and my recollection -- and I'm not the

1 expert with all the wells that are in this area, but
2 certainly in our program that we have seen probably a
3 couple hundred sites and probably -- I've seen
4 probably about -- oh, about ten or so re-abandonments
5 in my twelve years of working with the County, you
6 know, just working on these other sites that my
7 understanding is these wells were re-abandoned because
8 they were done to a lesser standard, typically
9 something that was done back in the '40s, '50s or
10 possibly '60s.

11 COMMISSIONER BLOUGH: Yeah, I should have
12 prefaced my comments by saying yeah, you're correct.
13 I mean, the typical condition -- the idea with this --
14 it was not -- it was abandoned prior to 1980, we find
15 the well, locate it, re-abandon it, and then there's a
16 ten foot no build radius around that well. So, I
17 should have said the ones that are -- have been
18 abandoned since 1980. You have not had any problem
19 with any of those leaking or causing a problem, is
20 that correct?

21 UNIDENTIFIED MALE: Madam Chair. Commissioner
22 Blough.

23 I do not know personally of any, but the --
24 you would probably have to talk to DOGGR, Division of
25 Oil, Gas & Geothermal Resources to get that exact

1 information. But my understanding is -- and the ones
2 that I've seen -- these have been wells that were
3 abandoned in pre-1980.

4 CHAIRPERSON HARTMANN: No more questions?

5 Thank you very much for coming back.

6 UNIDENTIFIED MALE: Oh, Madam Chair, you're
7 welcome. Thank you, Commissioners.

8 CHAIRPERSON HARTMANN: And Mr. Storrer, you're
9 the one to answer our questions about seals as well?

10 MR. STORRER: Madam Chair.

11 I would be happy to try to answer your
12 questions about seals, if that's what Ms. Lieu would
13 like.

14 MS. LIEU: Madam Chair. Members of the
15 Commission.

16 I think between the two of us hopefully we
17 can answer any seal questions.

18 CHAIRPERSON HARTMANN: Okay. Did you want to
19 start us off?

20 COMMISSIONER BROWN: Sure, I'll start off.

21 CHAIRPERSON HARTMANN: Commissioner Brown.

22 COMMISSIONER BROWN: I found Peter Howorth's
23 testimony quite compelling about the seals. And what
24 we see here is -- at the current baseline as Ms. Lieu
25 has indicated -- that's it the surfers who have been

1 causing the disturbance and changing seal behavior
2 such that they only come to their -- the beach at
3 night.

4 The question is at this particular site --
5 with the kinds of disturbances that are going to
6 occur, particularly with the coastal residents -- is
7 that going to pose some challenges for the seals at
8 night? Well, for the day and night, but primarily at
9 night?

10 MR. STORRER: Madam Chair. Commissioner Brown.

11 The sources of disturbance at night would
12 include lighting and noise from the structure, from
13 the dwelling. And I believe that has been
14 convincingly analyzed by the applicant that the noise
15 would be sufficiently attenuated and the views from --
16 at least from the haul out itself would be obstructed
17 by the cliff, by the geology, by the topography.

18 COMMISSIONER BROWN: Okay. You know, it's -- and
19 I'm going to have to preface this with some
20 information that I've looked at on the Internet -- is
21 that it's instructive to me that the -- what goes on
22 in Carpinteria, for instance, is that there's this oil
23 pier very nearby the rookery, there's a parking lot
24 very nearby, there's a busy surfer beach down at
25 Rincon. But what seems to make the difference at this

1 one site is the Seal Watch that's had some effect on
2 keeping people and dogs away from the beach.

3 And here we have nothing proposed like that
4 where it's beach closure, but what does -- there's no
5 sort of oversight. There's -- I guess they put up
6 signs saying the beach is closed, but there's really
7 no deterrent from people going onto the beach.

8 Presumably any vertical access points would be closed
9 during the breeding and pupping season.

10 So with that, it seems to me that we don't
11 really have sufficient mitigations for -- to protect
12 the seals. I mean, there's mitigations in sort of a
13 very weak form, if you will. And I think that it's
14 possible that there could be more human contact or
15 just as much human contact, because you're not really
16 limiting people just by -- through a sign.

17 MR. STORRER: Madam Chair. Commissioner Brown.

18 Let me try that, and then I'll pass it over
19 to Ms. Lieu. That's a multifaceted question,
20 obviously.

21 COMMISSIONER BROWN: Right.

22 MR. STORRER: This particular haul out is
23 primarily a nocturnal haul out. It's used primarily
24 at night. And that was the case in the mid '70s when
25 there was a fairly comprehensive study that was done

1 by a student at University of California and Dr.
2 Charles Woodhouse at the Natural History Museum. So
3 it was primarily nocturnal use then, and that has
4 continued to be the case. And I think it's -- by
5 inference it's safe to assume that that is largely due
6 to recreational use of the beach. I wouldn't be one
7 to identify any particularly user group myself.

8 COMMISSIONER BROWN: Okay.

9 MR. STORRER: But the other thing that is limited
10 with this site is it has a very steep cliff there, and
11 so tide would certainly -- you know, at times it's
12 completely inundated. So, those two factors.

13 It's my understanding that the Carpinteria
14 site was largely nocturnally used as well until the
15 protected measures and the efforts of the Seal Watch.
16 And I think you're entirely right that it's the Seal
17 Watch program that has sort of turned that around to
18 the point where they've greatly expanded -- the seals
19 have greatly expanded their use, and particularly
20 during the daytime hours. And it's because of those
21 protective measures.

22 And no, we don't have that sort of
23 stewardship program currently embodied in the
24 mitigation. And I don't even know -- that's more of a
25 process-type question perhaps how to do that, but I

1 certainly think that it's proved worthwhile at
2 Carpinteria. It would be something to encourage.

3 COMMISSIONER BROWN: The County's Coastal Land
4 Use Policies for seals are -- they're not very robust,
5 let me just say that, so I'm just wondering with what
6 Ms. Lieu has proposed as conditions, do you feel that
7 they are strong enough to protect the seals here,
8 let's say without a Seal Watch?

9 MS. LIEU: Madam Chair. Commissioner Brown.
10 Maybe we'll go back to John.

11 COMMISSIONER BROWN: Okay.

12 MS. LIEU: One thing I just wanted to start off
13 with is that from sort of a planning perspective, when
14 we look at the impacts to seals, I think it's
15 important to first look at what is the existing
16 condition at the project site and then what is going
17 to change as a result of the project? And based on
18 that change, what are appropriate mitigation measures
19 to apply? So based on what we've been talking about
20 now, the existing condition is primarily a nocturnal
21 haul out presumed to be because of existing
22 recreational activities on the site.

23 Going forward upon the formalization of the
24 trails, it would still be daytime use, similar to the
25 use today. I checked with Claude Garciacelay in our

1 Parks Department, and typically there is a dawn to
2 dusk closure time. I know that the trails community
3 would prefer it to be open for a longer period of
4 time, but that would be an expected component of the
5 trails. So then beyond that -- because of the fact of
6 the project going from, you know, the existing
7 unauthorized use to authorized use, we did apply the
8 mitigation measures that we've applied to the project,
9 which would -- as I was discussing before -- bring
10 public access further away from the haul out.

11 And then -- based on some of the comments
12 and some of the discussion on seals at the last
13 hearing and some of our discussions as well -- I have
14 put together some draft conditions for consideration
15 by your Commission, also on some of the other issue
16 areas. And one of those -- although it may be outside
17 the scope of our condition to require the formation --
18 require and sustain the formation of a seals watch, I
19 do have suggested language that would encourage the
20 County to support the formation of a seals watch in
21 the area.

22 And I also have additional language that
23 would require -- depending on which vertical access
24 point is chosen -- if a vertical access point closure
25 to -- one of the vertical access points closer to the

1 seal haul out starting at drainage four, which I can
2 -- let me put that up. Wrong one. So the other
3 additional language that I have that we could add to
4 mitigation -- one of our mitigation measures would say
5 that if the stairway's constructed at this drainage --
6 drainage four -- or anywhere closer to the seal haul
7 out heading in this direction that during the pupping
8 and breeding season that the top of the stairway would
9 be closed off.

10 So together -- and then we also have --
11 going back from recreational impacts, looking at
12 potential impacts from the home, again we've shown
13 that the noise would not be more than -- during the
14 construction would not be more than what is currently
15 heard by the seals at the beach. We've shown that the
16 seals would not have a view of the activities of the
17 home. And we've applied extensive lighting conditions
18 to prevent, as much as possible, lighting impact.

19 So it may be that when you compare the
20 baseline situation of unchecked public access,
21 although unauthorized, with a future actual monitoring
22 of the site and encouragement of a seals watch it
23 would be ideal if it did follow the model of
24 Carpinteria and show an improvement rather than a
25 decrease. So it's my belief that our mitigation

1 measures not only address the level of change of
2 potential impact from the existing situation to the
3 proposed situation, but depending on how it pans out
4 could potentially prove beneficial.

5 COMMISSIONER BROWN: And the one remaining
6 question I have is about the time period for the
7 closure of the vertical access that's from February
8 through May. And I note in other -- down in La Jolla
9 and for Carp they begin their monitoring in December,
10 I believe, to see what activity.

11 So, I'm wondering if Mr. Storrer would like
12 to comment. Maybe there needs to be monitoring
13 earlier than February just to know what's transpiring
14 there, because without that -- if they're pupping in
15 January, closure in February doesn't really help that.

16 MR. STORRER: Madam Chair. Commissioner Brown.

17 There's two issues. Monitoring -- I don't
18 see any issue at all with monitoring in a broader
19 scope that is from December through May. When you
20 speak about beach closure then obviously that affects
21 a lot of people. And the recommended closure period
22 -- not monitoring, but actual beach closure for the
23 pupping season in the EIR was February through May,
24 which is a fairly conventional timeframe.

25 In the information that I researched,

1 including the study that was done in the mid '70s, all
2 the pups were born in March, and they were weaned by
3 the end of May. So other information that's gathered
4 from the Channel Island, Vandenberg Air Force Base
5 suggests that the peak pupping time is February
6 through May. Now, that's not to say that there could
7 be aberrations -- there could be pups being born
8 earlier -- but it could be argued on one end that the
9 beach should be closed all year round, right?

10 So it's a balancing of -- to protect the
11 seals, but it -- I think it's a balancing act to --
12 you know, to enable public access, as well as
13 protect --

14 COMMISSIONER BROWN: Well, my only thought is
15 that you need to know what's going on there to know
16 when it should be closed. And if breeding behavior
17 starts in January then you probably should close the
18 beach in January.

19 MR. STORRER: Madam Chair. Commissioner Brown.

20 That's a valid suggestion.

21 COMMISSIONER BROWN: Okay. All right. Thank
22 you.

23 CHAIRPERSON HARTMANN: Commissioner Blough.

24 COMMISSIONER BLOUGH: Yeah, a question for staff.

25 If this trail were to be constructed and

1 built and the crossings and the bridge, would we see
2 that again -- the final plans before that would occur?

3 MS. LIEU: Madam Chair. Commissioner Blough.

4 Yes, there would be a requirement for a
5 coastal development permit that would come before your
6 Commission, along with additional environmental review
7 with the specific design of the trails, together with
8 an update to any of the existing mitigation measures
9 that are proposed as appropriate to the current status
10 of the site and all the biological resources at the
11 site.

12 COMMISSIONER BLOUGH: Okay, so for this
13 Commission, at least, as I understand it then we're
14 going to have the easement for the trail access from
15 the applicant and how we construct it, where we put
16 it, how we deal with it, how we restrict it's going to
17 be at our discretion in the future.

18 And just as a comment -- I mean, if it were
19 me, it's really simple to control the public's access
20 to the seals. You have a sign up there that says it's
21 a \$10,000 fine, and let's pay the owner of this
22 property ten percent of what everybody turns in and we
23 fine them. You won't have any -- you're going to have
24 maybe one or two and then it's done. (Laughter.)
25 Nobody's going to bother the seals.

1 But my point is that I'm not sure it's
2 necessary we beat this to death today. I mean, I
3 think we've got the access that we need, we have the
4 right to restrict and construct the -- approve the
5 design at some later date, so it seems to me you got
6 what we need from this applicant and the rest of it's
7 up to us in the future. If I don't have that right
8 tell me so we can -- maybe I can convince my Chair to
9 go forward.

10 MS. LIEU: Madam Chair. Commissioner Blough.

11 I think that what we have is we've -- I
12 think you're correct and that what we've set up is --
13 with this is specific yet flexible locations for the
14 vertical, horizontal, coastal, all the different
15 access points. And then we also have conditions that
16 all reference Condition 95, for example, that set up a
17 framework for both a transfer of the offers to
18 dedicate from the applicant to the County and also for
19 the management of the open space area. So it requires
20 the setup of that general framework already, but in
21 the future we will have the ability to refine that as
22 the County sees appropriate, as you've stated.

23 CHAIRPERSON HARTMANN: Commissioner Cooney.

24 Did -- was this just a quick follow-up?

25 COMMISSIONER BLOUGH: Just to say that that was

1 my point. And it's the County that's going to make
2 the decisions and it's the County that's going to
3 build the access points and the bridges and the rest
4 of it, correct? Thank you.

5 CHAIRPERSON HARTMANN: Commissioner Cooney?

6 COMMISSIONER COONEY: Madam Chair, thank you.

7 Ms. Lieu, I have to admit that I come from
8 our prior hearing, and the testimony we heard and all
9 the written evidence suggests that there's going to be
10 a problem with people accessing the beach anywhere to
11 the east of the seal haul out and wanting to get to
12 the west of the haul out to surf. I think we have
13 plenty of evidence that the real attraction of this
14 particular property is its access to good surfing at
15 the end of Tomate Canyon.

16 So let's assume that somehow we get control
17 on public access to the beach with regard to the
18 trails, what in this set of extensive conditions do we
19 have that in any way limits the ability of the land
20 owner to access the beach by the existing trail going
21 down in the middle of the haul out in the middle of
22 the night or any other time to walk his or her dogs or
23 to take horses down there? Is there anything that
24 limits the land owner's access to the beach in what we
25 have now?

1 MS. LIEU: Madam Chair. Commissioner Cooney.

2 The -- what would apply to the homeowners
3 would be the same conditions that would apply to the
4 public that we have on the project, so there aren't
5 specific separate conditions on the homeowner
6 prohibiting them from -- specifically from walking
7 down that trail. We do have requirements that apply
8 to all the public for the closures during certain
9 periods of the time, and the stairway -- should it be
10 constructed in one of those locations described --
11 would be closed off.

12 We also have -- in response to, I believe,
13 one of Mr. Howorth's comments -- added language that
14 requires on the subject property with regard to dogs
15 fencing of the property and keeping dogs on the
16 property, but again that wouldn't necessarily -- you
17 know, we wouldn't have -- we don't' have specific
18 language in the project description as of now that
19 says the applicant is specifically prohibited from
20 using the site in that manner.

21 CHAIRPERSON HARTMANN: I had a couple of
22 questions related to seals. We heard a great deal, I
23 think mainly from Mr. Howorth, about the EIR and how
24 adequate it was, particularly looking at the seal haul
25 out from the seal's perspective, not from the haul out

1 itself but from in the water out there deciding
2 whether they're going to haul up or not. Could you
3 comment on that?

4 MR. STORRER: Yes, Madam Chair, I'd be happy to
5 comment on that.

6 We might, perhaps, have a difference of
7 opinion -- Mr. Howorth and I -- regarding that
8 particular concern. Certainly, at some point from the
9 water, the seals are going to see -- if it's
10 constructed -- this new dwelling from certain
11 perspectives. The question is whether that would
12 deter them, either because of the lighting or noises
13 they can hear, which we've heard that the noise is
14 fairly well-attenuated. But if that changed
15 circumstance, if that change in the landscape would it
16 mean that they would no longer use the haul out, would
17 they abandon the haul out?

18 And it's my opinion that, from those
19 perspectives -- and I've not done a complete visual
20 analysis -- but if they were several hundred yards
21 away, for example, and they could see this new
22 dwelling and they could even see the lighting, I don't
23 think it would deter them from using a site, a haul
24 out that's been used for several decades. They have
25 acclimated to levels of lighting and noise and human

1 activity at the Carpinteria site -- not these
2 particular seals, of course, but other seals -- so I
3 see no reason why that would cause abandonment of the
4 rookery, if that speaks to your questions.

5 CHAIRPERSON HARTMANN: Although, I assume there
6 have been many rookeries abandoned up and down the
7 coast, and that's why we have so few left.

8 MR. STORRER: I think it's safe to presume that.
9 I don't know of any. I haven't been around that long
10 perhaps, but I mean it's safe to assume that there
11 were several more in prehistoric times certainly.

12 CHAIRPERSON HARTMANN: Could you talk about --
13 I'm familiar with the concept of taking and harassment
14 under the Marine Mammal Protection Act, the federal
15 law, but what finding is the Planning Commission
16 supposed to make with regard to seals? I mean, it's
17 quite -- we've got the policies that are quite clear
18 about kites and roosting and nesting areas. What is
19 it we're supposed to determine from the EIR and from
20 all the research and analysis you've done about seals?

21 MR. STORRER: Madam Chair.

22 I would hope that in your wisdom you would
23 come up with an answer for that, but let me see if I
24 can help you.

25 What we have with the County level is the

1 Local Coastal Plan Policy which states that it's an
2 environmentally sensitive habitat, and so it's
3 supposed to be afforded certain protections. Now, the
4 Marine Mammal Protection Act specifically says that
5 you cannot harass in any way, disturb, molest marine
6 mammals, including harbor seals. As to the
7 enforcement of that regulation there is -- to my
8 knowledge there's no federal level of enforcement at
9 the present time at this site.

10 So I don't know how -- if your question is
11 how to enforce protection at the federal level, I
12 don't --

13 CHAIRPERSON HARTMANN: No, no, I'm just asking
14 what findings are we supposed to make with regard to
15 the analysis and what level of disturbance or
16 harassment or harm? And you're just saying is all we
17 have to do is see that the habitat itself isn't
18 directly disturbed or --

19 MR. STORRER: Madam Chair.

20 That's an insightful, complex question, but
21 I think in my view the challenge here is going to be
22 in protecting the haul out site from increased
23 recreation use -- in my view. It's not from the
24 construction of the Ocean Estate's dwelling. That has
25 been answered to my satisfaction. Granted there's

1 going to be an incremental level of human activity out
2 there and possibly unauthorized or elicit trail use,
3 as has just been suggested, but it's really going to
4 be from more people visiting the beach. And I think
5 that's inevitable regardless of whether this project
6 goes forward or not.

7 So as to the particular mechanism by which
8 the rookery is protected from that in this context,
9 it's the County's responsibility. And I think that,
10 you know, the seasonal trail closures, signage, you
11 know, the interpretive information that can be passed
12 out to -- all the things that are embodied in that
13 mitigation measure are really the best we can do short
14 of having an enforcement entity out there. And I
15 don't think that's a practicality at this point.

16 MS. BLACK: Madam Chair.

17 Maybe I'm taking your question too
18 literally, but I think the findings that you need to
19 make are the CEQA findings, and those are on Page A6
20 and we are -- A6 in -- attachment A6 to the memo that
21 you received for today's hearing or for the last
22 hearing -- November 12th hearing. And the CEQA
23 findings indicate that this is a Class II impact and
24 that there are mitigations that reduce the
25 significance to a less than significant level.

1 And then the policy consistency findings,
2 which Mr. Storrer pointed out, this is an
3 environmentally sensitive habitat area, and so it
4 needs to be treated as such. So, it's both the CEQA
5 and policy findings.

6 CHAIRPERSON HARTMANN: Thank you. That's not too
7 literal. That's exactly what I was asking for. Thank
8 you.

9 Commissioner Blough.

10 COMMISSIONER BLOUGH: Yeah, and isn't it safe to
11 say that what we're doing here is replacing an
12 unauthorized access of up to a hundred people a day
13 right in the middle of the haul out area and moving it
14 several thousand feet east of the -- of that. So that
15 is the -- I mean, that's what we're doing. That is
16 your mitigation measure, I guess, or actually it's an
17 improvement. We're not mitigating anything. We're
18 taking an existing situation that's poor and replacing
19 it with a good situation, so we're -- I don't see the
20 problem there.

21 CHAIRPERSON HARTMANN: Now I need some procedural
22 help. Are we done with the biology and ready to go to
23 public comment? Do we want to -- are there additional
24 issues that the Commissioners might like to flag that
25 are still of concern?

1 MS. BLACK: Madam Chair.

2 I think you've heard the staff responses
3 that you didn't hear last time. You've heard from the
4 experts that you weren't able to hear from last time,
5 so I think the next step -- unless the Commission has
6 further questions of us -- is to go to public comment
7 and then wrap it up with the applicant.

8 CHAIRPERSON HARTMANN: Good. And I will have
9 more questions about the vertical access points. And
10 I don't know if anybody else has any specific
11 questions they know that they have yet that they'd
12 like to flag so that people in the public who might
13 know.

14 I have five public comment slips. And Mr.
15 Howorth has had time seated to him. He didn't ask for
16 extra time last time and I haven't really made a rule,
17 but it -- I'll allow him to go ahead and have his six
18 minutes and then three minutes for the remaining two.
19 So, we'll start public comment, and with Mr. Howorth.

20 MR. HOWORTH: Thank you, Madam Chair and members
21 of the Commission.

22 I feel a little bit at a disadvantage in
23 that between now and the last hearing there's been a
24 lot of things discussed today, but I'd almost like to
25 be asked the same questions that the biologist and the

1 County staff have been asked in order to respond to
2 some of the measures that have been proposed.

3 I do a lot of marine mammal consulting,
4 besides rescuing marine mammals, and I know when I'm
5 doing my job right that everybody's mad at me a little
6 bit; the environmentalist are bad at -- mad at me, the
7 surfers are mad at me, maybe the government's mad at
8 me, industry, the military. If I'm doing that, I'm
9 doing a good job, I feel. So, I'm here to make all of
10 you mad at me. Just joking.

11 Yes, there have been impacts from surfers
12 accessing the beach, along with beachcombers. I look
13 back at Ralph Hazard, an old-time Santa Barbarian
14 commercial fisherman when he first mentioned the
15 concept of "the death of a thousand cuts". You get a
16 cut on your hand from torture and it bleeds a little,
17 you don't think anything about it, you get ten more
18 small cuts, you don't worry about it, but after a
19 thousand, you bleed to death. I submit that's what's
20 going on with this harbor seal colony right now.

21 I think there's just going to come a point
22 where -- and we don't know where that point is where
23 it's going to go off the edge and we're not going to
24 see them anymore. I've already explained how special
25 this place is.

1 As far as current access, statements made
2 about a study in 1990s about switching to a nighttime
3 haul out, I go down there to rescue animals from time
4 to time, and I can say that they do haul out during
5 the day. It's not exclusively at night time a haul
6 out at all. I'd wonder what study says it's nighttime
7 other than in 1990 some students saying there's more
8 in the nighttime? More in the nighttime just because
9 they're discouraged from coming to shore during the
10 day.

11 As far as the trail to the beach, now
12 there's trash cans there. That was thoughtful, but it
13 invites people to sit down, have a lunch and
14 everything else there so they kind of feel welcome
15 there. And again, you're going to have -- with
16 uncontrolled beach access you'll have a lot of
17 disturbances.

18 I looked at some analogies. What I'm about
19 to say rings true to you. Is it something you can
20 verify and do you understand the explanations? But I
21 would ask that test of anybody who comes up here. I'm
22 glad to talk at any length about any of this stuff. I
23 devoted literally years of time monitoring marine
24 mammals. For example, Vandenberg was mentioned. Yes,
25 their pupping season does start in March. They're

1 farther north, colder climate. If you go to Alaska it
2 starts in June. It has nothing to do with Naples.

3 I've been monitoring it -- excuse me -- a
4 little bit too much coffee here -- been monitoring at
5 Vandenberg for about the last four years. I go up at
6 a minimum of month -- once a month, and I examine
7 about 16 haul out rookery areas there. And I can
8 assure you, yeah, March through June is fine for
9 Vandenberg. Is it for down here? No. Just look at
10 down here what happens.

11 Let's say somebody comes ashore, it spooks
12 everybody on the beach, all the harbor seals in
13 December, if they're near term they panic, they
14 stampede, some of them will abort their pups, some of
15 them will give birth to premature pups. There may not
16 be even any pups there yet. That's why the City of
17 Carpinteria said December 1st through the end of May;
18 they recognize that. That's a lot closer than
19 Vandenberg and a whole different environment.

20 So many discrepancies in the EIR, I don't
21 really know where to begin. Most of the mitigation
22 measures -- well, BIO 12 and 13 are just about public
23 access -- kind of switches the focus over to
24 unidentified public access. I'm all for Tomate Canyon
25 West as far as -- which is owned by the same property

1 owners, but it's farther west. It will solve the
2 problems; get public access, don't worry about
3 disturbing the seals from dumping a bunch of folks
4 east and having them walk west right through the seal
5 rookery. That's not going to do any good.

6 As far as the mitigation measures, initially
7 I was going to say that there weren't any applied to
8 construction and the dwelling. Now there are, but
9 there's no oversight. And if somebody comes twice a
10 week, great, the inspector's gone. Now the fox is
11 away the hen will -- or the -- you know, the fox is
12 away the hens will play, however you want to say it.
13 But twice a week is not adequate. We've got 25 people
14 onsite for two years, heavy equipment, that's just not
15 going to work.

16 Also, National Marine Fisheries Service has
17 control over marine mammals jurisdiction. Anybody who
18 monitors almost all marine mammals in this area has to
19 be approved by National Marine Fisheries Service. You
20 can have your own approved biologist, that's fine, but
21 they have to be approved by National Marine Fisheries
22 Service. The reason being is monitors in such
23 projects have to be able to say stop, and the people
24 doing the whatever is wrong have to stop and they have
25 to make it right.

1 Also, as far as oversight, if there's a
2 significant impact the project stops, NMFS is --
3 National Marine Fisheries Service is immediately
4 notified, and that's that until they resolve that
5 particular issue and make sure it's not going to
6 happen again. It's civil penalties or -- as you
7 mentioned, Commissioner -- \$10,000 a pop. And you get
8 a few of those and it'll go to criminal, which is
9 \$100,000 a pop. And that's what contractors, the
10 applicants, everybody involved in this might face.
11 And I guaranty without realistic mitigation measures
12 that you're going to see these kind of takes.

13 As far as no federal enforcement, I've
14 actually been down there.

15 CHAIRPERSON HARTMANN: That is your time.

16 MR. HOWORTH: Excuse me.

17 CHAIRPERSON HARTMANN: And I'm afraid --

18 MR. HOWORTH: Okay.

19 CHAIRPERSON HARTMANN: -- I'll have to call it,
20 because we have still a very --

21 MR. HOWORTH: Well, very quickly, I have been
22 down there with a National Marine Fisheries Service
23 federal agent. He's aware of this issue, and we've
24 made numerous cases against people hassling marine
25 mammals. There is enforcement in this area. I could

1 go on and on, but --

2 CHAIRPERSON HARTMANN: Thank you.

3 MR. HOWORTH: Anyway --

4 CHAIRPERSON HARTMANN: Thank you for coming.

5 MR. HOWORTH: Does anybody have any questions?

6 COMMISSIONER BROWN: Yeah, Madam Chair, I do, if
7 I may.

8 CHAIRPERSON HARTMANN: Commissioner Brown.

9 COMMISSIONER BROWN: You know, it's interesting,
10 I was reading on the Internet about the -- at
11 Vandenberg they do a periodic report of their seals.
12 And it's interesting because they talk about the
13 number of plane takeoffs and the rockets and all that
14 and how that affects the seals.

15 And I'm not quite sure I -- maybe it was too
16 late at night when I was reading it, but there is
17 quite a bit of disturbance up there nearby for these
18 seals. And I'm not sure what affect all that activity
19 has, but that certainly activity of a magnitude well
20 beyond what we're going to experience here, I would
21 hope. Does that seem to make any difference in what
22 you -- up there, for instance?

23 MR. HOWORTH: I'm not sure what the question was.
24 I'm sorry.

25 COMMISSIONER BROWN: Well, up at Vandenberg,

1 because there's quite a bit --

2 MR. HOWORTH: Oh, well, first of all, it's apples
3 and oranges.

4 COMMISSIONER BROWN: Oh, okay. All right.

5 MR. HOWORTH: Also, there's a difference between
6 rocket missile launches, which are transient sounds.
7 They occur over a very limited timespan.

8 COMMISSIONER BROWN: Okay.

9 MR. HOWORTH: They have very limited impacts.

10 And the train is the same thing. Trains
11 have been running from Santa Barbara to Los Angeles
12 since 1887 --

13 COMMISSIONER BROWN: Right.

14 MR. HOWORTH: -- and to San Francisco --

15 COMMISSIONER BROWN: Okay.

16 MR. HOWROTH: -- since 1901. It's a transient
17 sound.

18 COMMISSIONER BROWN: Right.

19 MR. HOWORTH: Construction sound goes on from
20 7:00 in the morning --

21 COMMISSIONER BROWN: Oh, I see.

22 MR. HOWORTH: -- to 4:00 in the afternoon. It's
23 not transient.

24 COMMISSIONER BROWN: And my last question, Mr.
25 Howorth, is do you think that the Carpinteria Seal

1 Watch has made any different in the -- to the behavior
2 of the seals there?

3 MR. HOWORTH: I'm sorry, you faded out there.

4 COMMISSIONER BROWN: Do you think that the Seal
5 Watch at Carpinteria has made any difference to the
6 seals' behavior?

7 MR. HOWORTH: Yes.

8 COMMISSIONER BROWN: Okay. Thank you.

9 MR. HOWORTH: Very quickly, in terms of that, we
10 mentioned the nighttime versus daytime.

11 COMMISSIONER BROWN: Right.

12 MR. HOWORTH: Daytime afternoon haul outs are
13 typical of undisturbed areas. When the area is
14 monitored during pupping season they can be
15 undisturbed, they can behave normally. A nighttime
16 haul out is not a normal thing.

17 COMMISSIONER BROWN: Okay.

18 MR. HOWORTH: And we see that shift when they're
19 not monitoring.

20 COMMISSIONER BROWN: Okay. Great.

21 MR. HOWORTH: We also see a shift at Naples when
22 we don't -- when there's nobody on the beach they haul
23 out. You saw a photo from my last letter.

24 COMMISSIONER BROWN: Okay.

25 MR. HOWORTH: They haul out during the day there.

1 COMMISSIONER BROWN: Thank you so much.

2 CHAIRPERSON HARTMANN: Thank you.

3 MR. HOWORTH: Thank you.

4 CHAIRPERSON HARTMANN: Mr. Keats and then Mr.
5 Palley.

6 MR. KEATS: Madam Chair and members of the
7 Commission.

8 My name is Bob Keats, and I'm a member of
9 the Surfrider Foundation. I would like to address
10 three issues that were mentioned at the last hearing
11 after public comment had ended.

12 The first is the issue of a taking. Denial
13 of the project would not constitute a taking because
14 the applicant could come back with a reformulated
15 project that would address or even eliminate the
16 significant and unmitigable impacts of the current
17 proposal.

18 Reformulating the project could include
19 reducing the size of the main residence, reducing the
20 development envelope and choosing a different location
21 on the property for the estate. Basically, the
22 applicant does have other possible options, so denial
23 of the currently proposed Coastal Estate would not
24 constitute a taking.

25 Secondly, I'm concerned about traffic safety

1 at the intersection of the project driveway and
2 Highway 101. I'm concerned about this in part because
3 when I first started surfing at this location, I used
4 to park in the driveway. And I can tell you that
5 getting back onto the freeway from that location was
6 not easy even 40 years ago when there was less
7 traffic.

8 Cars and trucks traveling on the freeway
9 have no warning that a vehicle may be pulling out of
10 that driveway. And even though there is a line of
11 site to the west of the driveway entrance, the
12 vehicles on the freeway traverse that distance very
13 quickly. So the safety issue raised by the Caltrans
14 letter is, in my opinion, both very real and
15 unmitigated by the project.

16 Third, I would like to comment on the issue
17 of a prescriptive right. In response to a question
18 from Commissioner Cooney at the last hearing, the
19 attorney for the applicant acknowledged that a judge
20 in a court of law might determine that a prescriptive
21 right has been established on this property. In all
22 of the years that I've been dealing with development
23 proposals for this property that's the first time that
24 I've heard anyone connected to the applicant make such
25 a statement.

1 I believe that the acknowledgment of a
2 potential prescriptive right increases the
3 significance of the impact to coastal access, because
4 if there is a prescriptive right then the Coastal
5 Estate would not merely be blocking an unauthorized
6 use but would, in fact, be blocking a legal access
7 route.

8 In conclusion, in addition to the issues
9 that I've mentioned today, during the three hearings
10 that you've held on this project you have heard
11 testimony about significant unmitigable impacts to the
12 white-tailed kites and to the harbor seals.
13 Considering all of the significant environmental
14 impacts of the Coastal Estate, I believe that it's
15 reasonable to conclude that this project is not
16 appropriate for this specific site on the property and
17 that this site is not an appropriate location for this
18 estate. Thank you.

19 CHAIRPERSON HARTMANN: Mr. Palley and then Ms.
20 Citrin.

21 MR. PALLEY: Madam Chair. Commissioner.

22 Ken Palley. I am also a member of
23 Surfrider. I am one of the individuals that has been
24 alluded to before who's trespassed on this property.
25 Although, at the time, it was widely done and there

1 was -- for the first number of years that I went out
2 there -- no effort to impede us. So, I believe there
3 is an implied dedication.

4 Could you put that last slide up that you
5 just took away just as I was about to say something?
6 So that's point number one.

7 Number -- point -- there was some comment --
8 and actually Mr. Howorth commented on this -- the
9 noise issue. The noise from the train -- it was
10 pointed out -- is a similar sound profile to what the
11 construction would entail, and so therefore it's not
12 much of an issue. But again, as he pointed out, the
13 train comes infrequently. Construction would be like
14 of long duration all day for two years. That's long
15 enough of a period of time to scare off the seals
16 completely.

17 A third point is there'd been some other
18 mischaracterizations -- with all due respect to
19 Commissioner Blough -- that what is being proposed is
20 not, in fact, legal access thousands of feet west of
21 the current site. The fact of the matter is the -- at
22 Tomate Canyon -- which is where most of the people go
23 now -- as Mr. Howorth alluded there's a trash barrel
24 -- and that's where actually people surf -- the actual
25 haul out spot is about 200 yards east of that. That's

1 where the seals are now. I see them there during the
2 day. I see -- I've never been there at night.

3 The actual ideal situation would be -- I
4 believe what is called -- and I'm not sure what number
5 it is here -- Tomate Canyon West. Now, that's where I
6 first used to go down. There used to be a rope. They
7 call it the mud ladder -- the local surfers. That is
8 about 1,000 feet or so west of where the seals haul
9 out. If that were the approved or dedicated access
10 point, a lot of the potential conflict with the seals
11 by surfers and others that could go down would be
12 greatly reduced, if not completely eliminated.

13 So, I would say that before making any
14 permanent decision on this you should require that the
15 primary access point or dedicated access point should
16 be Tomate Canyon West. It is doable. We used to
17 climb down there -- and it could be done -- and I
18 think that would resolve a lot of the potential
19 conflicts. And that's it. That concludes my remarks.
20 And thank you very much for listening to me.

21 CHAIRPERSON HARTMANN: Thank you.

22 Ms. Citrin. And you're our last public
23 commenter.

24 Any others? Get them in now or forever hold
25 your peace on this issue.

1 MS. CITRIN: Good morning, Chair Hartmann. Or
2 good afternoon, Chair Hartmann and Commissioners.

3 Ana Citrin, representing the Gaviota Coast
4 Conservancy. I'm going to respond just to new issues;
5 issues that have come up since the last hearing.

6 First of all, with respect to kites, we
7 heard a couple of things. We heard that impacts to
8 kites -- the rationale for them not being significant
9 is largely because nest trees are not limiting, but we
10 also heard that proximity to foraging habitat is
11 important.

12 And I want to bring to your attention Figure
13 3.46 from the ERI, which shows where the existing
14 foraging habitat is. And notice, with the exception
15 of this area north of 101 and this very small area on
16 the east, most of the foraging habitat is west of the
17 Ocean Estate and most proximate to the nest tree from
18 2013, whereas, all the other nest trees available on
19 the property are further way. I think that's worth
20 noting.

21 With respect to seals, I think there's still
22 an outstanding question about how offshore visibility
23 will impact the seals. And while I understand Mr.
24 Howorth's credentials, I'm not entirely clear on Mr.
25 Storrer's experience having to do with seals

1 specifically, so that would be something I would want
2 to know more about.

3 And I'll just echo comments I've heard about
4 the train being intermittent noise, construction being
5 constant noise. I think there you're absolutely
6 comparing apples to oranges, and no reasonable
7 conclusions could be made whatsoever from the fact
8 that the seals have acclimated for many years to train
9 noise.

10 Comparing public access to the impacts from
11 the estate for seals is similarly comparing apples to
12 oranges. I mean, you can say that there may be more
13 public access, there may be less, but the seals have
14 been accustomed to public access, whereas, this home
15 would be an entirely new use. These seals have never
16 experienced this type of use -- construction there,
17 and that could have a very detrimental impact.

18 We heard from Mr. Howorth, we've heard from
19 others that the access at Tomate West would solve the
20 problem, so why aren't we including access there?

21 Well, the applicant has said it's infeasible because
22 they want to build other homes there. Now, I brought
23 to your attention last time a covenant restricting
24 development on the entire property to only two homes,
25 and that's a document that it's the record. And when

1 you're making findings concerning the feasibility of
2 alternative you are directed to look at the whole
3 record, and we believe that that is pertinent.

4 Also, the applicant has said well, it's a
5 private agreement so don't worry about it, don't look
6 at it. Well, it's also the private agreement that
7 demonstrates that they're able to bring water to their
8 property. Now, they haven't said don't look at it for
9 that reason. So, in reality, they are relying on this
10 private agreement.

11 And the fact that we have not heard a direct
12 answer from them with respect to this -- in fact, it
13 was interesting that it was Ms. Winecki that responded
14 to the issue last time, not Mr. Kauffmann. And we
15 have yet to hear a clear answer as to why Tomate West
16 is infeasible, why relocating the Coastal Estate is
17 infeasible. And in fact, the easement directly
18 contradicts the grounds for infeasibility and failure
19 to meet project objectives that are stated in the EIR.
20 Thank you very much.

21 CHAIRPERSON HARTMANN: Thank you.

22 And that does conclude our public testimony,
23 and the applicant now has an opportunity to respond.

24 UNIDENTIFIED FEMALE: Thank you, Madam Chair,
25 Members of the Planning Commission. I won't take too

1 much time. We've spent a lot of time on this.

2 First, just to respond directly to the
3 public testimony you just heard, the Easement
4 Agreement is available in the public record. Please
5 do take a look at it. You will see that there is no
6 covenant restricting the development to two homes on
7 the totality of the ranch lots, as well as the Naples
8 sites. There's actually an exhibit specifically
9 referenced in that easement agreement that covers just
10 the ranch lots in terms of restricting development to
11 two homes. So, please take a look at it. It might
12 help clarify the record if I have not done so
13 adequately today.

14 First, I want to take a little bit of time
15 to talk about public access. I do want to reinforce
16 the fact that we have coordinated very closely with
17 the Coastal Commission on all components of the
18 project; the location of the homes, the resource
19 setbacks, including the setback with respect to the
20 2013 white-tailed kite nest tree, as well as all of
21 the locations of the public access dedications.

22 As I stated before, you know, as the
23 applicant, we really don't have any particular stake
24 on what the County decides to do with the public
25 access dedications. We think it's a huge public

1 benefit -- thanks -- that it's going to be a great
2 public amenity, and the Coastal Commission staff has
3 concurred with this. It's very important that these
4 access opportunities be secured when they're available
5 and then the implement and entity has the opportunity
6 to decide ultimately how those OTDs fit into the
7 larger vision of the Gaviota Coast, how they should be
8 managed to protect sensitive resources. We've done
9 the best we can to create an umbrella and a framework
10 to allow that process to be facilitated in the future,
11 and we hope that the County will take advantage of
12 that.

13 With respect to the issues raised about the
14 seal haul out, I think this issue has been adequately
15 covered, but I do want to touch just very briefly on
16 some comments that continue to come up about providing
17 access offsite to the west of this property -- it's
18 called Tomate Canyon West -- and the contention that
19 that access is going to solve all these problems and
20 all these issues. It's very likely that someday that
21 this issue is going to come before you, and the
22 question about access through Tomate will when those
23 project applications come forward at some point, but I
24 assure you it it's not going to resolve all the issues
25 with respect to protection of sensitive coastal

1 resources on Gaviota Coast.

2 The County's LCP actually has a specific
3 policy that prohibits direct access to Naples Reef,
4 which is where the location is, and actually suggests
5 that the access should continue to be by boat. So,
6 you're going to have a lot of dialogue probably very
7 similar, if not more robust than the conversation
8 you've had with respect to these public access
9 dedications today when that opportunity comes before
10 you as well.

11 I believe that Mr. Kauffmann adequately
12 explained the issue of prescriptive rights, and he's
13 certainly here to answer any additional questions
14 should you have them. It certainly is not our
15 position that prescriptive rights exist on this
16 property, and it doesn't matter what we say because it
17 has to be adjudicated in order for the County to
18 consider it as such.

19 Really quickly touching base on the
20 Restoration Plan. I think that we agree entirely with
21 the comments that have been made here today and the
22 level of detail and attention that's been paid to the
23 Restoration Plan and what it should include, how it
24 should be developed. We developed that Conceptual
25 Plan to allow that dialogue to take place. So the

1 Conditions of Approval lay out the framework for that
2 Restoration Plan, there are specific performance
3 criteria, there are contingency measures in the event
4 that we don't meet those performance criteria within
5 the first five years, and of course that final plan
6 will be submitted as Conditions of Approval and will
7 require final County review and signoff before
8 implementation.

9 And so there's going to be an additional
10 opportunity to make sure that that Restoration Plan
11 includes all the level of detail, all the specific
12 goals that are necessary to ensure that the foraging
13 habitat on this site, which is compromised currently,
14 will be substantially enhanced, and will allow the
15 site to continue to sustain a white-tailed kite
16 population for both perching, nesting, fledging
17 dispersal, the whole -- hopefully the whole array of
18 habitat benefits.

19 So, again, just going back to the fact that
20 while we have ample suitable tree habitat, the
21 limiting factor is foraging habitat, and that's really
22 what this project is focused on and intends to enhance
23 and preserve in perpetuity.

24 Going back to the big picture again really
25 quickly, you know, we talk a lot about striking the

1 appropriate balance for private rights and public
2 access and resource protection and protection of
3 significant visual open spaces. For this particular
4 project, the applicants are asking to use 4 percent of
5 their property -- 4 percent of 143 acres, limited
6 agricultural uses that are designed and proposed to
7 specifically help screen the development, be
8 consistent with the Gaviota Coast, and then 83 percent
9 of the property preserved as a Conservation Easement
10 in perpetuity with all these really wonderful
11 resources. Not just white-tailed kite habitat, not
12 just seal haul out, but wetlands, monarch butterflies,
13 special status plant species including tar plant and
14 cliff aster.

15 It's really got a very robust diversity
16 that, without the project, is somewhat compromised in
17 its current condition, and there could be questions
18 about its preservation in the long-term.

19 And so with that, I think that I probably
20 rambled off enough to you all. Please know that we do
21 all of our same technical experts here today, and our
22 hope is that by the close of this hearing we're going
23 to be able to reach a vote on this project. And we
24 really appreciate the Commission's support moving
25 forward. Thank you.

1 COMMISSIONER BROWN: I have a question now.

2 CHAIRPERSON HARTMANN: Yes, Commissioner Brown.

3 COMMISSIONER BROWN: April, you talked about
4 preservation as being a very important issue. And I'm
5 wondering -- again, I get back to the Conservation
6 Easement -- the goal of restoring the habitat will be
7 carried forth somehow into that Conservation Easement
8 such that when they do their annual inspections they
9 will be using that as a comparison, as a basis. I'm
10 not sure what quite the language is, but there will be
11 -- that will sort of be imbedded that the effort that
12 has been put into that habitat will be embedded in
13 that easement such that that's what will be the
14 standard for the maintenance and perpetuity.
15 Is that --

16 UNIDENTIFIED FEMALE: That's correct. Madam
17 Chair. Commissioner Brown.

18 There's actually two prongs to that.

19 COMMISSIONER BROWN: Okay.

20 UNIDENTIFIED FEMALE: And, you know, the first
21 are the Conditions of Approval on the project --

22 COMMISSIONER BROWN: Right.

23 UNIDENTIFIED FEMALE: -- which the applicant is
24 responsible for -- the landowner is responsible for
25 those conditions run with the land.

1 The County here, in coordination with the
2 Coastal Commission, actually has also included a --
3 developed and included a very unique condition, and
4 that's a disclosure condition to all future property
5 owners so they are fully aware of the resource
6 constraints are and what the responsibilities are to
7 ensure that they're maintained.

8 In terms of the Conservation Easement, that
9 Conservation Easement has to reflect and be consistent
10 with all the Conditions of Approval on the project.

11 COMMISSIONER BROWN: Okay. Great. And let me
12 just speak -- ask you a question about Eagle Canyon.
13 That's, I guess, drainage number one on Nicole's map.
14 I understand that that's been approved, vetted and
15 titled, so if there were money on the -- in the pot
16 today you could build a stairway there, let's say. Is
17 that correct that would be a vertical access point?

18 UNIDENTIFIED FEMALE: With approval of the
19 project. So there is an easement currently recorded
20 there --

21 COMMISSIONER BROWN: Right.

22 UNIDENTIFIED FEMALE: -- and titled by the County
23 and Coastal Commission, but the easement is on hold, I
24 should say, because --

25 COMMISSIONER BROWN: Okay.

1 UNIDENTIFIED FEMALE: -- of the settlement
2 agreement.

3 COMMISSIONER BROWN: Okay. I thought it was in
4 title with -- oh, that's right, that's standstill.
5 Okay. Got it. Thank you. Okay. Thank you.

6 CHAIRPERSON HARTMANN: Any other questions?

7 Commissioner Blough.

8 COMMISSIONER BLOUGH: I guess a question for
9 County counsel. Even if the court were to say that
10 there's a prescriptive right over the area that's now
11 being used by the surfers, isn't it -- is it not the
12 County's prerogative to not allow that access to be
13 used because of the damage to the environment or to
14 the seals for example? It's kind of like even if they
15 were right and they have a prescriptive right there,
16 do we not have the right to say no, you cannot have a
17 formal access point at that place because of the
18 damage to the environment?

19 UNIDENTIFIED FEMALE: Madam Chair and
20 Commissioner Blough.

21 I believe if a court recognized the
22 prescriptive rights then there would be limitations on
23 what we could require, but here we have no
24 adjudication of prescriptive rights and the County
25 does not have authority to determine that.

1 COMMISSIONER BLOUGH: You know, just -- I'm just
2 -- I guess my question is -- I think you answered it,
3 but my point is I guess we've been doing damage to the
4 seal population for a number of years. You're allowed
5 to continue to do that? That just strikes me as being
6 wrong, but maybe that's what it is.

7 CHAIRPERSON HARTMANN: Commissioner Cooney.

8 COMMISSIONER COONEY: Well, maybe I better
9 follow-up to the discussion. Nothing in the law of
10 easements at all, whether they're implied or express,
11 would authorize someone to violate the Marine Mammals
12 Act and harass the seals. So, you know, the County --
13 it might be a matter of enforcement, but the County
14 cannot ignore that if it's going on on the basis that
15 it's an adjudicated implied easement. You didn't mean
16 to suggest that, did you?

17 UNIDENTIFIED FEMALE: Madam Chair and
18 Commissioner Cooney.

19 That's correct. We don't enforce that
20 particular provision, but that's true. There would be
21 other limitations on violations.

22 CHAIRPERSON HARTMANN: So I guess that was a
23 question to the applicant that -- so we're back to
24 staff for any final responses.

25 MS. LIEU: Madam Chair. Members of the

1 Commission.

2 I'll keep this really brief, because I think
3 it's best to focus on any questions that you have, so
4 I'll just go through a few items with regard to some
5 of the statements.

6 Beach access would not be uncontrolled, as
7 we've discussed. There are multiple mitigation
8 measures that would control beach access. And the
9 statement that there would be no oversight of
10 construction activities is also untrue, because we
11 have, as I discussed previously, permit compliance
12 monitoring the site.

13 And in addition to that, some of the
14 language that I've put together since the last
15 hearing, should your commission desire it, would allow
16 for additional monitoring during seals -- during the
17 seal haul out season. So, we do have monitoring and
18 permit compliance consistent with permit compliance
19 that we use on all projects throughout the County.

20 On the issue of foraging habitat, Ms. Citrin
21 held up the exhibit showing foraging habitat. And I
22 think that's very important because, yes, it does show
23 the foraging habitat. If you look at -- and John
24 Storrer or John Davis could probably go into this in
25 more detail. If you look at a series of exhibits of

1 where the foregoing habitat has shifted on the subject
2 property and on the properties to the east and west
3 and north, it has shifted around from year to year.

4 And to a certain degree that does follow the
5 main reason that within the center of the property we
6 don't see foraging habitat, whereas, in the past we
7 did see foraging habitat. It has to do with the fact
8 of that invasive black mustard that's come in on the
9 property that hasn't been mowed, that hasn't been
10 managed. So that's specifically why when we look at
11 that mitigation measure that we're talking about
12 improving foraging habitat, we believe it will be
13 effective in improving the habitat for the white-
14 tailed kites, because it will bring foraging habitat
15 back to the site in an area where it once was and in
16 closer proximity to those usable nesting trees.

17 So that ties in exactly with the goals of
18 the mitigation measures. Looking at the site over the
19 long-term to bring the kites back to this property to
20 use it more is the goal. And I think that there's a
21 couple other small points, but those are the main
22 items I wanted to comment on.

23 CHAIRPERSON HARTMANN: Commissioner Cooney and
24 then Commissioner Brown.

25 COMMISSIONER COONEY: Thank you, Madam Chair.

1 Ms. Lieu, I would like to hear what
2 conditions you're proposing for additional monitoring
3 of the seal haul out at any point, if that's okay,
4 Madam Chair?

5 CHAIRPERSON HARTMANN: Of course.

6 MS. LIEU: Madam Chair. Commissioner Cooney.

7 I printed out some copies of all the
8 conditions, and these are -- some of them -- one of
9 them is a hazmat condition, one is the traffic. So
10 these may or may not be conditions that you want to
11 apply to the project or changes you may or may not
12 want made, but what I did is I listened to the
13 comments and comments -- any information I received at
14 the last hearing or since then from your Commission
15 and made some changes to these conditions, which I
16 will walk through on the slide as well if you would
17 like.

18 COMMISSIONER COONEY: Madam Chair.

19 Maybe I could suggest that we take a brief
20 break so that we could take a look at these proposed
21 conditions and not cause the audience to have to sit
22 by while we do.

23 CHAIRPERSON HARTMANN: Okay, a ten minute break.

24 COMMISSIONER BROWN: Can I -- before we do that?

25 CHAIRPERSON HARTMANN: Oh, but Commissioner Brown

1 had her question first.

2 COMMISSIONER BROWN: Yeah, I believe it was Mr.
3 Howorth who -- someone said that construction
4 monitoring two times a week isn't adequate. Would you
5 like to respond to that or perhaps the applicants?

6 MS. LIEU: Madam Chair. Commissioner Brown.

7 Maybe John Storrer --

8 COMMISSIONER BROWN: Storrer. There you go.

9 MS. LIEU: -- would like to comment on this as
10 well, but I would simply state that any condition that
11 we develop I think needs to provide reasonable
12 protection. And we would have both -- we would have
13 County permit compliance staff out at the staff at --
14 we could establish a more regular basis if we wanted
15 to, but County permit compliance staff gives a
16 training to all of the construction workers and the
17 construction managers. And that's any project that we
18 have permit compliance that that's what we apply to
19 the project. And we've found that to be adequate in
20 other cases.

21 Now, one of the conditions that you will see
22 in there does talk about specific protection for
23 seals, and that is to provide additional biological
24 monitoring during the period of time when the seals
25 are hauling out so that there is a biologist on the

1 site a couple times a week as well and in order to
2 provide additional training to the construction staff
3 in addition to our permit compliance staff.

4 COMMISSIONER BROWN: Could we hear from Mr.
5 Storrer on that? Thank you.

6 MR. STORRER: Madam Chair. Commissioner Brown.

7 As to the frequency of inspections and
8 monitoring, I do a fair amount of compliance
9 monitoring. And it can range -- depending on the
10 scope of the project and the environmental
11 sensitivity, it can range from full time to periodic
12 inspections, which -- say twice a week. What's
13 important is I think that can be adjusted.

14 I think if you can establish a rapport with
15 the construction crew, education, make them understand
16 the importance of following the rules, my experience
17 is that if you establish that early on you can do less
18 frequent monitoring. If you have issues arise then
19 obviously you -- in response you increase the
20 frequency of inspections and perhaps notices of
21 violation.

22 So, I think twice a week would be the
23 minimum for a project of this scale. I think that the
24 additional biological monitoring that Ms. Lieu has
25 suggested for the seals during the pupping season is a

1 good idea. So I don't know if I answered your
2 questions, but I think that would be the minimum,
3 twice a week.

4 COMMISSIONER BROWN: So what I hear you say is
5 that while this may be a minimum, perhaps there needs
6 to be some flexibility built into this depending upon
7 the circumstances encountered with the person doing
8 the monitoring with the construction crew.

9 MR. STORRER: I would say most definitely.

10 COMMISSIONER BROWN: Okay.

11 MR. STORRER: I mean the level of cooperation is
12 key in the responsiveness.

13 COMMISSIONER BROWN: Okay.

14 MR. STORRER: The whole culture, I think, of
15 environmental compliance monitoring and construction
16 workers has evolved considerably over the last 20 or
17 30 years to where it's not -- you don't have willful
18 noncompliance as nearly as much as was the case
19 previously. I think people realize there's a cost to
20 doing business. And I think the people that work in
21 Santa Barbara County, regardless of whether or not
22 they work here, are well aware that we have a well-
23 earned reputation for the importance of protecting the
24 resources. So my experience is largely positive, and
25 that's probably half the work I do, is permit

1 compliance monitoring.

2 CHAIRPERSON HARTMANN: So we're ready for a ten-
3 minute break, and then I guess we come back to --

4 (Pause in the proceedings.)

5 CHAIRPERSON HARTMANN: Good afternoon. We're
6 reconvening the December 4th, 2013 meeting of the
7 Santa Barbara County Planning Commission. We're on
8 the Paradiso del Mare, Item Number 3 on our agenda.

9 And I think we're asking staff some
10 additional questions that we have, and then about
11 ready to go into final comments and deliberations on
12 this project. So here's the call for last questions
13 to staff.

14 Commissioner Brown.

15 COMMISSIONER BROWN: There's been much discussion
16 on the Coastal Estate, and I know we've heard this
17 testimony. And I'd like you, Ms. Lieu, just to
18 refresh our memory. But the siting of this residence
19 in this particular area was done because elsewhere on
20 the property resource constraints are even greater
21 than here. Is that -- I want to sort of get that, but
22 would you just frame that in your own words, please,
23 to just give us some idea of why we couldn't put it
24 someplace else?

25 CHAIRPERSON HARTMANN: And could I tag in? Since

1 that was done -- the Constraints Analysis -- we've
2 learned about the kite nest and there's a lot of
3 questions about the seals. So did you go back and
4 look at these in light of these additional issues or
5 they've been ruled out? I hope I'm making that
6 question clear.

7 MS. LIEU: Madam Chair. Commissioner Brown.

8 This -- what I have up on the screen right
9 now is the constraints map, and I can go back to my
10 initial presentation and pull up some alternatives
11 maps as well, but basically anything of any color that
12 you see on this slide is some sort of constraint
13 essentially.

14 So the property is constrained by -- and we
15 looked at a number of alternatives. So, for example,
16 just as you come into the driveway -- over here shown
17 in the purple was one of the alternatives that we
18 analyzed in the EIR and in our findings. And you can
19 see from there that there's a grove of monarch
20 butterfly roosting trees there, there's hazardous
21 materials. And again, this is a summary. There's
22 also in that general vicinity archeological materials.

23 We looked at over here to the other side of
24 the driveway -- in the pink -- we looked at that site.
25 And from a visual perspective, we found that that

1 would be the most visually intrusive. And that's also
2 in the area that -- as I was discussing before -- we
3 hoped to have improved foraging habitat for white-
4 tailed kites. But visual resources was a big issue on
5 that alternative site.

6 CHAIRPERSON HARTMANN: Allow me to interrupt.

7 MS. LIEU: Yes.

8 CHAIRPERSON HARTMANN: Just to be clear, there's
9 two parcels. And so the -- what you're showing us now
10 is an alternative location for which estate?

11 MS. LIEU: Madam Chair. Members of the
12 Commission.

13 Both of the -- those two options -- so in
14 our EIR, we analyze various combinations of homes, so
15 both of those would be alternatives on the Inland
16 Estate. And then on the Coastal Estate, we looked at
17 this property here. The Coastal property is much more
18 constrained than the Inland property. As you'll see,
19 it's covered with wetlands, tar plant, native
20 grassland, oil and gas facilities, there's
21 archeological materials. So -- and then we also
22 looked at, again, visibility -- the visibility of
23 sites from the freeway, which was -- we haven't talked
24 about it much, but it was an important issue for us in
25 our analysis.

1 And then we also looked at the fact that the
2 public trails and public access dedications are only
3 offered by the applicant in configurations that bring
4 their homes over to the far side of the property --
5 over to the west side of the property where they're
6 currently clustered. And one other component of that
7 is looking to the future and potential construction on
8 the Naples lots. In early discussions with the
9 Coastal Commission there was a desire to cluster the
10 development for all of that going forward over to the
11 west of the property so that homes that are developed
12 on this property are clustered, you know, in the
13 future with Naples development.

14 Looking to seals, we did look at that in
15 great detail in the EIR, and that issue has not been a
16 new issue. There's been no changes to the seal haul
17 out since our initial analysis in the EIR and the
18 initial mitigation measures that we applied. So I
19 think that our analysis -- the Class II impact that
20 we've had from the start of this iteration of the EIR
21 has stayed the same Class II.

22 So the change did come with the kite nest,
23 but I would point out with the fact -- with respect to
24 the kite nest is that there was one other successful
25 nesting tree on the property in 2002. And then

1 there's also other trees on the property. And if we
2 talk about the fact that kites tend not to return to
3 the same tree, going forward in the future they could
4 likely return to -- use a different tree for nesting.

5 So I think -- I mean, in summary, the site
6 is highly constrained -- the situation with the white-
7 tailed kites and nesting in this white tree. Again, I
8 think we have to go back and look at the big picture
9 which is are there suitable nesting trees throughout
10 the property where the kites are going to go in the
11 future and where is the foraging habitat going to be
12 in the future?

13 So on balance, yes, I don't think there's
14 been any change in the project that would make these
15 two sites -- would knock them out of being the most
16 desirable locations on the property, especially given
17 the number of constraints on the property, and with
18 respect to the benefits of the project when it
19 includes the coastal access trails and vertical
20 access.

21 CHAIRPERSON HARTMANN: Commissioner Brown.

22 COMMISSIONER BROWN: Ms. Lieu, this -- where the
23 house is currently sited that has not ever been white-
24 tailed kite foraging habitat?

25 MS. LIEU: Madam Chair. I think I'd ask --

1 Commissioner Brown.

2 I think I'd ask Mr. Storrer or Mr. Davis
3 with their experience. Perhaps John Davis, I don't
4 know. John, do you want to come up and -- do you have
5 an answer for that?

6 UNIDENTIFIED FEMALE: I've looked at these maps
7 for seven years now, so -- Madam Chair, Commissioner
8 Brown.

9 Yes, that area has been used for foraging in
10 the past. That specific area, yes.

11 COMMISSIONER BROWN: Okay.

12 UNIDENTIFIED FEMALE: But we see a similar issue
13 there. If I had my presentation, I could pull it up.
14 We've now got a large stand of mustard there -- same
15 situation that we've seen in the central portion of
16 the property. So, generally speaking, when we look
17 back five years ago, we see more extensive foraging
18 over the property. And with this kind of onslaught of
19 the invasive native mustard -- let's see. This is our
20 version of the constraints map. Let's see. There you
21 have it.

22 So that bright orange there are those
23 invasive mustard fields. And you can see how the
24 location of the ocean lot home is located in a similar
25 area. That's just where the habitat value is

1 severally compromised. So again, going back to some
2 of the things that Nicole was pointing out -- I mean
3 one of the reasons why we've clustered the homes on
4 the far western portion of the property -- not only
5 does that provide good separation and land use
6 compatibility with the future public access use of the
7 site, but it also allows us to apply that conservation
8 easement so it preserves that big chunk of property.
9 We're not -- you know, we're not bifurcating it. It's
10 one solid contiguous block of habitat.

11 COMMISSIONER BROWN: Got it.

12 CHAIRPERSON HARTMANN: I had an additional
13 question. Was there -- give the constraints -- the
14 greater constraints on the coastal side -- the coastal
15 parcel, was there ever discussion -- and I came into,
16 you know, this project in March, and I know there's a
17 body of knowledge I'm not familiar with -- but
18 transferable development rights or doing something on
19 the inland property that is bigger and better, but not
20 on the constrained coastal side?

21 MS. LIEU: Madam Chair.

22 I may defer to my supervisor on this, but my
23 understanding is that there are two legal lots. And
24 each lot is allowed one single family dwelling on the
25 lot. And as we went over at the last hearing, looking

1 at development offsite would not meet a number of the
2 main objectives of the proposed project. And then
3 I'll transfer it over.

4 MS. BLACK: Madam Chair.

5 I didn't hear the whole question, but I
6 think I get the point. We also don't have a mechanism
7 in our ordinances or plans to allow for a transfer.

8 CHAIRPERSON HARTMANN: Any other questions?

9 Okay. I guess that brings it back to the
10 Commission to comment and deliberate. I will take off
11 my chair hat for just a minute. This is in the third
12 district, and so I guess it's important that I at
13 least put some of my initial thoughts about this on
14 the table.

15 I think we start with the Class I impact to
16 the archeological resources. And I know there have
17 been heroic efforts to reach out and consult with the
18 Native American people, but I think the mitigation
19 measures are -- don't really cover it. And I think
20 everybody understands that even though trying to
21 protect objects and not disturb them in the ground --
22 it's still a Class I impact because of the symbolic
23 importance of this site.

24 So the question then -- at least in my
25 analysis -- becomes is this -- and I thought Ms.

1 Gerber's testimony and I thought Mr. Ardundo's (ph)
2 letter were very compelling -- that this is a site
3 that -- there are other sites, but this has very
4 special meaning. And I think it's sometimes hard for
5 us to fully appreciate that. So the question is, is
6 that Class I impact -- do we find enough in the
7 overriding considerations to make it worth it? Is the
8 balancing or the tradeoff worth it? And I'm having a
9 very difficult time.

10 I think the applicant and the staff have
11 worked heroically to try to figure out how, in a very
12 constrained site, to make this happen, but I'm still
13 really struggling, especially with the seal haul out.
14 I think Mr. Howorth raised some very significant
15 questions about the adequacy of the EIR in this
16 regard. Looking at it from the seals' perspective and
17 from out in the beach and from out in the ocean coming
18 in and what would the Coastal Estate, in particular,
19 mean for the seal haul out? So that's a real big
20 question in my mind.

21 Another question is the public access and
22 recreation impacts. I know there was a draft EIR that
23 came out in 2009 and found significant adverse
24 unmitigated impacts on longstanding public access to
25 the coast. And that -- I understand that that draft

1 was replaced later by another draft, and basically
2 it's rather descriptive. But for me it's rather
3 compelling that CRTC --the organization that advises
4 the county on trails -- came out against this project.
5 And I think the way they -- given the trails.

6 And I think the problem is -- despite the
7 Coastal Trail, which everybody is very enthusiastic
8 about -- it's very unclear when and how the public
9 will ever get access to this site. So we've got
10 wonderful pieces, but how they're ever going to come
11 together is a big question mark.

12 And I think the vertical access, from what
13 understand, is really problematic. We didn't really
14 get to this with Commissioner Brown's question about
15 stairways and the Coastal Commission. And we heard a
16 lot of testimony about battering and would it -- even
17 if you built such a thing would it withstand sea level
18 rise and the impacts that we're planning for with the
19 ambulatory other easement and coastal retreat.

20 So I think the recreation impacts and -- I
21 think those are very significant -- and I think the
22 seal haul out is very significant. And I'm just not
23 quite sure that it rises to the level of overcoming --
24 you know, whether I'd be prepared for -- to make a
25 finding of overriding considerations. And we've heard

1 a lot about the kites, and I'm uncertain about that.
2 We do have a specific policy, and I don't find that
3 this conforms to the policy, although people are
4 suggesting that there's a lot of mitigation.

5 So, that's my initial thinking. I put it on
6 the table and am eager to hear from my fellow
7 commissioners.

8 Commissioner Blough.

9 COMMISSIONER BLOUGH: Madam Chair.

10 Before we do that, Commissioner Cooney had
11 asked about the additional conditions, and we all took
12 ten minutes to read those. And I have some comments
13 to those before we go into deliberations, if that's
14 all right.

15 CHAIRPERSON HARTMANN: Of course.

16 COMMISSIONER BLOUGH: On Page 1, Page 2 -- on
17 Page 3 -- I know -- which is the third one and is
18 stapled together.

19 CHAIRPERSON HARTMANN: It starts with 49 at the
20 top?

21 COMMISSIONER BLOUGH: Yeah. One of the bullet
22 points says construction of vertical access shall not
23 occur. Is that like a typo or a mistake? I didn't
24 understand that.

25 MS. LIEU: Madam Chair. Commissioner Blough.

1 My apologies. That is a typo. It should be
2 struck out.

3 COMMISSIONER BLOUGH: Okay. Great.

4 Then I'll just make comment, I have no
5 problem with all of them, except for 49. I see no
6 reason to do that for the discussion we had earlier
7 today with our hazmat people in Santa Maria. I think
8 there's no reason to force them to monitor any methane
9 gas that might escape from the three wells, since
10 there's been -- there's -- to my knowledge there's
11 been no well where methane gas has escaped from a well
12 that was abandoned after 1980 or using the 1980
13 method.

14 So, other than that, I agree with the rest
15 of the condition changes in here and have no comment
16 on them.

17 CHAIRPERSON HARTMANN: Commissioner Brown.

18 COMMISSIONER BROWN: Oh, thank you.

19 As I mentioned earlier, I would like to see
20 on Page 2 the mitigation monitoring required that
21 there be some flexibility built into the monitoring
22 during construction, so it's not just hard and fast
23 two times. That there's some other language that's
24 provided such that if there needs to be additional
25 monitoring beyond two times a week that it's -- that

1 it can be done.

2 My other issue is that I would like to see
3 there be -- from Mr. Howorth's comment -- that while
4 seal pupping may --

5 CHAIRPERSON HARTMANN: Commissioner Brown, we're
6 having trouble finding where you are.

7 COMMISSIONER BROWN: Well, you know, I've --
8 you've got another document here, and I'm trying --
9 and I'm having a hard time finding it on -- it was
10 Condition -- oh, god, there's too much paper.
11 (Laughs.) It's condition number -- well, it's Rule
12 31, Mitigation Monitoring Required. So it must be 89,
13 but I don't -- oh, it's in the second part where it
14 talks about --

15 MS. BLACK: Yeah, it's in the --

16 COMMISSIONER BROWN: Oh, it's on the bottom.

17 MS. BLACK: It's Condition 89.

18 COMMISSIONER BROWN: Right. It's, yeah, the
19 last --

20 MS. BLACK: Which is the last condition on this
21 page.

22 COMMISSIONER BROWN: Right, where twice weekly --
23 I think there needs to be some flexibility in case it
24 needs to be more than that. However you wish to write
25 that, that would be my preference. For the --

1 MS. BLACK: Madam Chair.

2 Maybe it would be helpful if we just
3 commented as --

4 COMMISSIONER BROWN: Yes, please.

5 CHAIRPERSON HARTMANN: Sure.

6 MS. BLACK: So that condition actually says --
7 oh, I'm sorry. So we could just say at least twice
8 weekly -- at least twice weekly.

9 CHAIRPERSON HARTMANN: Is that --

10 COMMISSIONER BROWN: Does that allow -- does that
11 allow for flexibility?

12 MS. BLACK: If it says at least, yes.

13 COMMISSIONER BROWN: Okay. All right.

14 Then on the -- about the harbor seal haul
15 out, I'm not sure what -- Ms. Lieu, you're going to
16 have to help me here. I think that there needs to be
17 some monitoring before the closure in February,
18 because if these seals are breeding and if they're
19 pregnant in January and there's disturbance, well, it
20 doesn't do any good to start the beach closure in
21 February. So there needs to be some consideration for
22 monitoring starting -- what they do down in Carp --
23 done in December, I would guess.

24 I don't know if that's -- there seems to be
25 some difference of opinion here, but maybe that would

1 be the most protective. I guess we need to have Mr.
2 Storrer weigh in on that.

3 COMMISSIONER BLOUGH: If I can --

4 CHAIRPERSON HARTMANN: Oh, Commissioner Blough.
5 Sorry.

6 COMMISSIONER BLOUGH: If I could weigh in on
7 that.

8 CHAIRPERSON HARTMANN: Sure.

9 COMMISSIONER BLOUGH: I was actually going to
10 suggest that we just take the whole condition out,
11 because the reality is this is the County doing this.
12 And I don't think it's appropriate for us to sit back
13 here and try and make rules for the County. I mean,
14 if the County wants to close it in December, they can
15 do that. If they want to close it all year they can
16 do that. So I just don't --

17 COMMISSIONER BROWN: Well --

18 COMMISSIONER BLOUGH: I don't get it. I mean --

19 COMMISSIONER BROWN: Well, may I just respond to
20 that?

21 COMMISSIONER BLOUGH: Sure. Yeah, I'm done.

22 COMMISSIONER BROWN: It's that this is a plan.
23 The plan shall include but not be limited to. So this
24 is about a plan that the County is going to develop
25 and these are the standards for the plan to be -- the

1 standards to be included in the plan.

2 COMMISSIONER BLOUGH: If you're talking about the
3 County doing it, if you're putting the County on
4 notice that they want to staff to do that, I guess
5 it's okay, but it's not the applicant's concern is my
6 problem, I guess.

7 COMMISSIONER BROWN: Well, then --

8 CHAIRPERSON HARTMANN: Ms. Black, will help
9 resolve this?

10 MS. BLACK: Well, Madam Chair.

11 I just point out that Commissioner Blough is
12 correct to appoint a trail -- if and when a trail is
13 actually installed will have to go through a permit
14 process, it'll either be the County or a third-party
15 who will obtain that permit, and then we'll further
16 condition it. I think it's still a good idea in the
17 context of this permit to foresee the likely
18 consequences of the dedication. I don't think you
19 need to iron out every single point, I think, but I
20 wouldn't recommend deleting it. And I don't know that
21 it's worth spending a lot more time on, because the
22 conditions will be further refined when the trail is
23 actually proposed for construction.

24 COMMISSIONER BROWN: But I think that's -- but
25 this indicates the intent and the direction of the

1 Commission at this point in time. And I think -- I
2 don't know when these things will be built, when
3 they'll come before the Commission, before --

4 MS. BLACK: So Madam Chair.

5 The way the condition is worded now it says
6 if you're going to have vertical access at drainage
7 four or west of drainage four then it should be closed
8 during the pupping and breeding season. And then it
9 says in parens these are the months we think that it
10 is.

11 COMMISSIONER BLOUGH: The word should instead of
12 shall works for me.

13 MS. BLACK: And then it talks about not
14 constructing the stairway during the breeding and
15 pupping season. I mean, I'm not sure how much more
16 detailed you want to get at this point.

17 COMMISSIONER BROWN: Well, you know, I guess my
18 point is here that from some of the questions I've
19 heard from Commissioner Hartman and from my own
20 questions, you know, I am concerned about these seals
21 and that we don't have enough protections for them.
22 And that the closer the scrutiny and observation of
23 their behavior will be helpful in knowing whether or
24 not these vertical access points need -- and beach
25 closure needs to occur earlier than one, February.

1 It's a hard and fast date that you've got here, but,
2 you know, seals don't go by hard and fast dates. So
3 that's my only issue, is that there's got to be some
4 flexibility.

5 MS. BLACK: I have -- I have a suggestion.

6 CHAIRPERSON HARTMANN: Thank you.

7 MS. BLACK: Take out the dates.

8 COMMISSIONER BLOUGH: Yeah, take out the dates.

9 MS. BLACK: Just take out the dates.

10 COMMISSIONER BLOUGH: Right.

11 CHAIRPERSON HARTMANN: Okay.

12 Would that be acceptable, Commissioner
13 Brown?

14 COMMISSIONER BROWN: I don't know.

15 COMMISSIONER BLOUGH: And change the word should.

16 COMMISSIONER BROWN: No, it's got to be closed.

17 It's not a should matter. If they're pupping down
18 there you've got to close it. That's -- you know --
19 that's -- okay.

20 I think that's it for my thoughts on it.

21 CHAIRPERSON HARTMANN: So, Commissioner Blough,
22 you wanted to come back to these conditions and have
23 the Commissioners review and weigh in. We've done
24 that. I guess there is some discussion about whether
25 everyone agrees about taking out Condition 49. You

1 proposed that. We didn't get much response about
2 that.

3 COMMISSIONER BLOUGH: Yeah.

4 CHAIRPERSON HARTMANN: Commissioner Cooney.

5 COMMISSIONER COONEY: It just makes sense to me,
6 Madam Chair, that we adopt the conditions that are
7 most intended to protect the public that might someday
8 acquire this property. I would rather have the
9 condition be too strict. I mean, basically, here
10 we're suggesting a monitoring plan. I think it's
11 pretty easy to install a detector system that would
12 alert the future users of that property, so I was
13 supportive of that condition.

14 I think that Ms. Lieu is responding to
15 issues that were raised by all of us at the last
16 hearing. I think she's done a workmanlike job of
17 drafting these conditions. And when I read that one
18 over and now hearing Commissioner Blough, I think the
19 practicality is Commissioner Blough is not concerned
20 about it. But I have to say I am still concerned
21 about the potential for methane contamination, so I
22 like the condition.

23 CHAIRPERSON HARTMANN: Commissioner Ferini.
24 First on this condition and then --

25 COMMISSIONER FERINI: Right, I'll stay on this

1 condition.

2 So it sounds like we're trying to dictate to
3 Public Health how they will do the monitoring. And in
4 our previous meeting the methane issue was brought up
5 that that was more specific to, say, the Los Angeles
6 area and the tar pits and that methane wasn't really
7 an issue in our area, so I'm concerned about that.

8 Then the other thing is it sounds like this
9 site is being given special consideration on
10 monitoring when we've heard from Public Health that we
11 already have homes, neighborhoods built within a
12 certain radius of wells that were properly abandoned
13 after 1980. And so now we're putting something
14 different here, but then the rest of the people that
15 live around these wells in other locations that's not
16 as important. So I just kind of see like an unequal
17 enforcement that we're asking Public Health to put on
18 a piece of property that it doesn't make sense to me.

19 CHAIRPERSON HARTMANN: Commissioner Cooney, I
20 think you've addressed that somewhat last time. Would
21 you care to address it again?

22 COMMISSIONER COONEY: I'm not sure, Madam Chair,
23 what I said last time, much less when we started this
24 project.

25 CHAIRPERSON HARTMANN: (Laughs.) A discretionary

1 permit and --

2 COMMISSIONER COONEY: Yes, it is a discretionary
3 permit. This is an opportunity to tighten up what
4 would otherwise be the restrictions. And I think what
5 the condition really does is put the onus on the
6 polluter, the original beneficiary of the oil project,
7 which is now ARCO/BP, to provide the County Public
8 Health Department with a certain amount of
9 information, which is not going to be difficult and
10 may already be in existence.

11 And all I'm basically seeking with this
12 particular language is to identify the fact that we,
13 as a Planning Commission, are concerned about the
14 siting of this resident where it's proposed in close
15 proximity to these particular wells. So, you know,
16 could it be that there's no need for this? It is
17 possible. I think the Public Health Department is
18 going to enforce this or not in accordance with its
19 own rules, but it does hear from the Planning
20 Commission that we're concerned enough to attach a
21 condition to it.

22 So I think it's fine the way it is, and, in
23 fact, that says nothing about the fact that we should
24 be monitoring other sites around the community. And
25 that's another issue for Public Health not before us.

1 CHAIRPERSON HARTMANN: Commissioner Brown, where
2 are you? I think we've got -- we're clear where
3 Commission Blough and Commissioner Ferini are.

4 MS. BLACK: Madam Chair.

5 CHAIRPERSON HARTMANN: Oh, excuse me.

6 MS. BLACK: I think Nicole has some information
7 that might help.

8 CHAIRPERSON HARTMANN: I'm sorry. Thank you.

9 MS. LIEU: Madam Chair. Commissioner Cooney.

10 I just wanted to mention that as we were
11 putting this language together I did -- I checked with
12 the Hazardous Materials Unit staff to see if this
13 language has been modified by them. So I think
14 they're -- although they don't see a particular
15 concern on this property they are fine with this
16 language. And we also -- through the applicant --
17 checked with ARCO/BP to see if they had any issue with
18 this language either, and ARCO themselves is fine with
19 adding these monitoring devices if that factors into
20 your decision on this condition.

21 CHAIRPERSON HARTMANN: Commissioner Ferini and
22 then Commissioner Blough.

23 COMMISSIONER COONEY: That's helpful for me.
24 Thank you.

25 COMMISSIONER BLOUGH: As long as the applicant is

1 not objecting to the condition, I'm not going to
2 object to it. And obviously if ARCO's paying for it
3 then my concern is relieved. But I am -- I will say
4 that this does concern me, because I do think it's
5 totally unnecessary. And it's not cheap to do this.
6 Now, you've got ARCO that's willing to pay for it,
7 great, but I don't want to see this -- necessarily see
8 this condition with other oil wells that come up in
9 the future that are not one that belong to ARCO or one
10 of the major oil companies. We have -- there's a lot
11 of wells in this area that were done by well cutters.

12 And, you know, if the Department of Oil and
13 Gas says that it was abandoned properly in accordance
14 with the 1980 or thereafter rules then I'm fine with
15 it. But I'll say if the applicant doesn't care and I
16 see them nodding their head then I'll let it stand.

17 CHAIRPERSON HARTMANN: So are there any other
18 issues with the conditions? I believe not.

19 So then I think we're coming back to the
20 broader question of approve or deny the project.

21 COMMISSIONER BROWN: How difficult can a decision
22 be -- is it to make on a project where there's two
23 houses on two AG zoned lots? These are the houses of
24 principally permitted uses. How difficult? You know,
25 it's been darn difficult the amount of detail and

1 minutia. And you can see, I think, the Commissioner's
2 concerns, and certainly my concerns have to do
3 primarily with the biological resources.

4 I've spent a lot of time with the
5 biologists. I've met with Mr. Storrer. I've met with
6 Mr. Davis. I've talked to Mr. Holmgren. I've gone on
7 the Internet. (Laughs.) I've done a lot of reading.
8 I appreciate hearing from Mr. Storrer, because I think
9 he presents sort of a middle position on the white-
10 tailed kites. And while I'm -- would prefer to see
11 greater setbacks for -- on the coastal residence for
12 that tree, I think that there is probably evidence --
13 there's testimony that kites may use -- will go to
14 other trees. So while I would have preferred to have
15 seen larger setbacks, I'm okay with what it is
16 primarily because we are getting some benefit - other
17 benefits from this project in the habitat restoration.
18 Now, let me talk about that.

19 I'm still somewhat concerned about the fact
20 that what we are -- what the applicant is going to do
21 in terms of restoration may temporarily disrupt any of
22 the white-tailed kite prey habitat. And although Mr.
23 Storrer has made some great comments, I guess I'm just
24 too unfamiliar with what occurs and what happens and
25 the monitoring and the comparing to know whether or

1 not it's sufficient. So I kind of have to leave it
2 there, because I just don't have the knowledge. But I
3 guess I take some comfort in the fact that whoever --
4 I presume there will be a County biologist who reviews
5 the plan to ensure it's sufficiency and that it looks
6 at these issues -- and I notice that there is
7 somewhere in the documents here some added language
8 that Nicole put on BIO 10, so I'm grateful for that.

9 About the seals. I think if there wasn't a
10 coastal residence the issue of the seals would be a
11 lot easier for me, because I think that that causes -
12 can cause a great deal of conflict for the seals. We
13 don't know what the impact of this residence is going
14 to be. We have no idea. It's going to be whatever
15 the residents make of it, I suppose. So to say that
16 we've done sufficient mitigations, I don't think we
17 can make that statement.

18 As I've said, I've done quite a bit of
19 Internet surfing to look at other sites, particularly
20 the -- what's gone on at the Carp site. And I'm very
21 appreciate that Nicole has put in the documentation
22 about the County shall encourage and support the
23 formation of the Gaviota Seals Watch similar to the
24 Carpinteria Seals Watch. Now, in order for that to be
25 successful -- and I know that the County is probably

1 going to be very hesitant to go forth with this
2 because that's not really in their mission -- I would
3 like to ask the applicant if he would be willing to
4 provide some funds to facilitate the formation of this
5 watch to give to the County to say this is what this
6 money -- whatever the pot of money is -- I don't -- I
7 wouldn't imagine that it needs to be very much -- to
8 help facilitate this.

9 Because I think even Mr. Howorth and Mr.
10 Storrer have indicated that the seal watch in Carp has
11 been responsible for making a habitat somewhat better
12 for helping to do some enforcement. And I think that
13 that's what's going to be needed here, particularly
14 with the increased recreational use of this area.
15 Over time that's going to happen, so I would like to
16 ask the applicant -- I don't know if that's the
17 appropriate -- this is the appropriate time to ask
18 them -- but they may want to come up as we -- after we
19 make our comments, but I would like to see that. In
20 fact, I'll be the first person to sign up for that.

21 So there's -- you know, there's been much
22 discussion in the community about denial of a project.
23 Well, my question is there may be other -- another
24 project here, but would it be better than this? You
25 know, this has been extensively studied. We've looked

1 at a lot of issues. We've looked at other sittings
2 for the Coastal Estate. We've seen all the resource
3 constraints. We've seen the benefits of the project;
4 the Coastal Trail. The Coastal Commission wants the
5 vertical access points. I'm not really in favor of
6 those, but I imagine when this thing goes to the
7 Coastal Commission they'd add them anyway. So, it's
8 better to have them there for the future. You cannot
9 tell what may come of that.

10 You know, it's interesting the community
11 hasn't made much of any staircases or stairways
12 leading down to the beach here. And I was reminded by
13 Mr. McLeod of similar stairways in Santa Barbara; the
14 Mesa Lane and the Thousand Steps. And I looked at
15 photos of those, and they really aren't that
16 objectionable. They are, in fact -- I think the
17 bluffs there are slightly higher than what they are
18 here, so something like that would be feasible. It
19 wouldn't be like that horrible stairway down at
20 drainage one, which is very unsightly. So, that would
21 be possible.

22 And to the Chair's question about -- you
23 know, we may never get the Coastal Trail. Well, that
24 seems to be the nature of implementing trails and
25 constructing them is that there's just not money. But

1 there is money. There well may be money from the
2 Coastal Conservancy, from other grants, from CREF
3 funds. And don't forget the applicant is constructing
4 a small piece of it 1,600 feet over there on the east.

5 Now, let me talk about the Class I impact.
6 If it would have been at all possible to avoid this
7 Class I impact, I would have asked the applicant to do
8 that, but the applicant has in good faith tried to
9 find another route for this waterline and just simply
10 hasn't been able to do it. So it's unfortunate that
11 it's had to go in this area, very unfortunate, but I
12 don't know how else that he would have gotten his
13 waterline to the project. And I don't think you can
14 deny him that. I'm not sure the legalities of saying
15 well, no, you cannot put your waterline in here. The
16 parcel's been annexed to the Golieto water district.
17 I don't know all the ins and outs and how that's
18 occurred and -- but -- so for me I'm going to have
19 make that overriding consideration for that Class I
20 impact.

21 I don't like to do it, but I think I have to
22 because I think the applicant has in good faith --
23 really he's -- I understand that there's a sheaf of
24 documents that showed that Caltrans won't cooperate,
25 Union Pacific won't cooperate, the property owner

1 across the freeway won't cooperate, the property owner
2 to the east isn't willing to renegotiate. So we're
3 sort of stymied. Would I have preferred to see no
4 Coastal Estate? I would have, because as I've
5 mentioned earlier, I think that it would have been a
6 better project, but I think that there's many
7 difficulties in doing that.

8 So with that, and if I can hear from the
9 applicant if he'd be willing to provide some funds to
10 help the County do a seal watch at some point in the
11 future -- I'm not sure how that would work or what
12 kind of condition -- how you would have to expand that
13 condition -- that would be helpful for me to know
14 that. Because I think -- just based upon some of the
15 testimony I've heard -- that that's been rather
16 important.

17 CHAIRPERSON HARTMANN: If you'd like to answer
18 that you can. You don't have to. (Laughs.) And I am
19 a little hesitant to bring you back, but if you're
20 eager to answer it, go ahead.

21 UNIDENTIFIED MALE: Madam Chair. Commissioner
22 Brown.

23 A, we really appreciate everybody's time and
24 how hard staff has worked on this. And we would
25 absolutely be willing to do that for seal watch. And

1 we would contribute \$20,000 in an escrow account that
2 could be used, again, to help with that and hopefully
3 facilitate that. It would be our pleasure to do that.

4 COMMISSIONER BROWN: Wow. Well, I certainly
5 would be most grateful, and I would hope that it would
6 go a long ways in providing some extra protection for
7 the seals. And let me just say, before I close my
8 comments, I do want to thank both the applicants over
9 the -- I don't know how many -- it's been a couple
10 years, I guess, since I've sort of been involved with
11 this project. They've been very willing to meet with
12 me to answer my questions. You know, I tend to ask a
13 lot of questions. And with staff, Nicole has just
14 been wonderful. I've had a couple -- I've had a sit
15 down -- I think a couple sit down meeting with her --
16 multiple phone calls, multiple emails.

17 As I said, it's been a very -- for a project
18 on the surface that seems pretty simple, it's been a
19 very complicated project. So, I'm here to support the
20 project with the changes. And again, I appreciate the
21 applicant stepping forward for seal watch. Thank you.

22 CHAIRPERSON HARTMANN: Commissioner Blough, are
23 you ready?

24 COMMISSIONER BLOUGH: Sure. Why not?

25 I had one question of staff, though, just

1 for -- maybe I've forgot something, but I thought the
2 waterline -- I thought we were putting the waterline
3 above ground and we're putting two feet of dirt on top
4 of it. So I'm not sure how that creates a Class I
5 impact for the Native American reserves, because we're
6 not digging the ground, we're not moving anything. I
7 know there was some language in here talking about
8 wanting a Native American there if their line broke.
9 I'm going why? (Laughs.) It's above ground. The
10 dirt we're putting on top of the waterline. If we had
11 to remove it to repair, it couldn't possible affect
12 the Native American resources that might be there.
13 So, if I could answer that question first, then I'll
14 make my other comments.

15 MS. LIEU: Madam Chair. Commissioner Blough.

16 We still determine a Class I impact as a
17 result of the high level of importance of the site to
18 the Native American community from a spiritual
19 perspective. And in that regard, even the placement
20 of the fill on the surface and the testing of the
21 boundaries to determine the placement of the fill was
22 very significant to them at this site specifically,
23 which is why we continue to find it Class I.

24 COMMISSIONER BLOUGH: Okay. Well, for me that's
25 not a Class I impact if we're doing it that way, so

1 I'll just have to say I don't think -- and that's not
2 a problem for me, so I don't need to have an
3 overriding consideration for it.

4 But at any rate, no, I think that staff has
5 done an admirable job -- and this is obviously a very
6 difficult, very sensitive project -- done an admirable
7 job conditioning it. And for me, I'm not -- to deny
8 them their right to build a project for me just
9 doesn't work. I told you last meeting that I think
10 that would be considered a taking, I still think
11 that's the case, but I'm happy to see that the
12 applicant and the staff have compromised and come up
13 with what I think is a really darn nice project. And
14 I think it's going to work well, so I'm prepared to
15 support it tonight, too.

16 CHAIRPERSON HARTMANN: Commissioner Ferini.

17 COMMISSIONER FERINI: Thank you.

18 Yes, I would echo Commissioner Brown and
19 Commissioner Blough's thoughts on to see how staff and
20 the applicant have been very patient in working on
21 this project and addressing the needs. And thank you
22 Mr. Storrer for all that you've explained today. It
23 was very helpful. And I'm prepared to move forward.

24 CHAIRPERSON HARTMANN: Commissioner Cooney.

25 COMMISSIONER COONEY: Thank you, Madam Chair.

1 First, with respect to the Environmental
2 Impact Report you mentioned, I believe it does have --
3 and counsel's going to wince when I say that -- I
4 think it does have defects, but as I understand it the
5 defects in the Environmental Impact Report can be
6 supplemented by testimony we receive during our
7 hearings. And I think we -- particularly with regard
8 to the seals and the kites -- have had a tremendous
9 amount of expert testimony, most of which has
10 heightened my appreciation for how important this site
11 is to some of our most treasured endangered animals.
12 So, you know, I'm not -- I think we'd be on thin ice
13 to require further environmental review in the
14 document when all it's going to do is confirm what
15 we've heard during our hearings.

16 And based on that information, I'm still
17 very worried particularly about the seal haul out
18 area. I think this rookery may be in danger of being
19 eliminated as so many have, particularly in Southern
20 California, but the question about whether the public
21 will cooperate given this new access point will give
22 sufficient room for the seals to prosper there. And
23 the prospect similar to the Carpinteria haul out seal
24 watch program, which I've experienced firsthand and
25 find to be very effective, gives me hope that we might

1 look back on this years from now and say, you know,
2 the protection of the seals was actually better with a
3 permit than if we left it to each individual to pick
4 its way to the beach and have no restrictions at all.

5 So with regard to my concern -- after the
6 last hearing I think I was prepared to ask for further
7 environmental review. I feel now that's
8 inappropriate.

9 I'm very appreciative of Mr. Storrer's
10 comments about consulting with the construction
11 personnel. Because however long it may take to build
12 the trail, we're going to have a residence there in
13 the relatively near future. And I think it's going to
14 be very important, particularly as the seals that
15 might be pupping during that period of time become
16 acquainted with the intensity of use. I think it's
17 going to be very important that everybody, including
18 the individuals working in the construction, to
19 cooperate and assist in giving the seals a very wide
20 birth. And that has to do with the equipment as well.

21 It's not enough to just suggest that well,
22 it's only a nocturnal rookery at this point so let's
23 don't worry about the noise we make during the day. I
24 absolutely accept that whatever noise is being made
25 during the day is adding further depreciation to the

1 rookery and the willingness of the seals to haul out
2 in that particular area. So, I'm really anxious to
3 use this as a test case of how the County can enforce
4 its conditions. And I'm glad that Commissioner Brown
5 added the flexibility so that it isn't just a zoning
6 inspector showing up twice a week on a regular
7 schedule. That we can really -- particularly with the
8 cooperation of the construction crew -- do a good job
9 of minimizing the impact.

10 So, you know, while I do so with
11 considerable trepidation, I'm not comfortable in
12 denying the project based on all of the conditions,
13 including the ones that have been put forth by staff
14 today. So, I am prepared to vote in support.

15 CHAIRPERSON HARTMANN: So I'll just get in my
16 last little bit here and we'll vote.

17 We've seen the constraint map and how
18 constrained particularly the coastal parcel is. I
19 think that staff and the applicant have worked very,
20 very hard to address this, and the complexity of the
21 analysis and the mitigations shows that. And I think
22 they've done it in a -- I think they've done a
23 tremendous job, but I think some problems cannot be
24 solved. Some adverse impacts just cannot be
25 adequately mitigated. And at least within the

1 constraints presented by the proposed site for this
2 project some findings cannot be made.

3 And I will stand that I think that there's
4 greater than a Class III to recreation. I think
5 there's a greater than Class II impact to the seal
6 haul out. I think the seals -- the effect of a two
7 year construction with ongoing noise and vibration
8 that's very different than the baseline is extremely
9 problematic.

10 And I think, again, we have different pieces
11 of a recreation area, but there's no way to really get
12 there and may not be for decades if ever. So I think
13 this is a case where we wish that the Gaviota Coast
14 Plan's internal TDR program had been developed. I'm
15 not sure I'm convinced that you actually have to have
16 an ordinance to be able to do this, but that's my
17 thinking about it.

18 And I think, Mr. Villalobos, we're ready to
19 call for a vote on this. Well, we're ready for a
20 motion first. And Commissioner --

21 COMMISSIONER BLOUGH: (Inaudible.)

22 CHAIRPERSON HARTMANN: No, I won't do it. I
23 never do, and I won't on this one. Usually --
24 Commissioner Brown is my partner. And because it is a
25 third district, as a courtesy, one of the other

1 commissioners does it for me.

2 MS. BLACK: So this time it is on Page 2 of the
3 Memo. So the Memo dated November 12th. And that would
4 be with the Amendments to the Condition of Approval
5 that we handed out today and with a change to the
6 project description to add the \$20,000 in an escrow
7 account for use for seal protection.

8 COMMISSIONER BROWN: That will be my motion.

9 COMMISSIONER BLOUGH: And I'll second it.

10 COMMISSIONER BROWN: Thank you.

11 CHAIRPERSON HARTMANN: Any further discussion?

12 Now, Mr. Villalobos.

13 MR. VILLALOBOS: Commissioner Ferini?

14 COMMISSIONER FERINI: Aye.

15 MR. VILLALOBOS: Commissioner Cooney?

16 COMMISSIONER COONEY: Aye.

17 MR. VILLALOBOS: Commissioner Blough?

18 COMMISSIONER BLOUGH: Aye.

19 MR. VILLALOBOS: Commissioner Brown?

20 COMMISSIONER BROWN: Aye.

21 MR. VILLALOBOS: Commissioner Hartmann?

22 CHAIRPERSON HARTMANN: No.

23 MR. VILLALOBOS: Motion passes four to one.

24 CHAIRPERSON HARTMAN: Procedurally, do we need a
25 little break before we -- okay. (Laughs.)

1 How about a five minute break and we'll
2 change and go onto Item 4 on our Agenda.

3 (End of Volume II, Item 3, Paradiso del Mare
4 Ocean and Inland Estates Environmental Hearing.)

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C E R T I F I C A T E

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.
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IN WITNESS WHEREOF, I have subscribed this certificate at San Bernardino, California, on this 11th day of January, 2014.



CYNTHIA FELTON