

HOLLISTER & BRACE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SANTA YNEZ VALLEY OFFICE
2933 SAN MARCOS AVENUE
SUITE 201
P.O. Box 206
LOS OLIVOS, CA 93441

805.688.6711
FAX: 805.688.3587

SANTA BARBARA OFFICE
1126 SANTA BARBARA STREET
P.O. Box 630
SANTA BARBARA, CA 93102

805.963.6711
FAX: 805.965.0329

www.hbsb.com

JOHN S. POUCHER
RICHARD C. MONK
STEVEN EVANS KIRBY
BRADFORD F. GINDER
PAUL A. ROBERTS
JOHN G. BUSBY
SUSAN H. McCOLLUM
ROBERT L. BRACE
MARCUS S. BIRD
PETER L. CANDY
MICHAEL P. DENVER
KEVIN R. NIMMONS

JOHN B. GALVIN
Of Counsel

September 16, 2009

HAND DELIVERED

BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA
123 E. Anapamu Street
Santa Barbara, CA 93101

Re: **El Encinal Appeal Hearing: September 22, 2009**
Denial of Land Use Permit for Barn
Case No. 09APL-00000-00009 (08LUP-00000-00024)

2009 SEP 16 PM 1:31
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Dear Chair Centeno, Members of the Board:

On behalf of Carson Scheller, Trustee of the Scheller Family Trust, this is to urge you to **uphold the April 8, 2009 decision of the Planning Commission.**

The Commission denied an "after-the-fact" Land Use Permit that would have legalized appellant's 1,944 sq. ft. barn in Los Alamos. Our clients own the adjoining ranch. Appellant built the barn without the required permit entirely within a 75' wide access, water and utilities easement. The easement was dedicated in the 1986 County-approved tract map which created the Scheller parcel.

Appellant is attempting to unilaterally modify the tract map by reducing the width of the dedicated right-of-way from 75' to 26', or less. This is why the Planning Commission denied the permit. The Commission's decision was correct.

THE ISSUE

The issue for your board to decide is whether the Planning Commission acted correctly in denying appellant a Land Use Permit for the barn. The Commission denied the permit because it was **unable** to make the following required finding:

"The subject property is in compliance with all laws, regulations, and rules pertaining to uses, **subdivisions**, setbacks and any other applicable provisions of this Development Code..." LUDC § 35.82.100 E.1.c; emphasis added.

The Commission concluded that it **could not** make this finding because:

"[I]ssuing a permit to legalize the pole barn would not be consistent with subdivision requirements due to the encroachment of the pole barn into the easement approved as part of the originally approved Tract Map, TPM 13, 549."

The Commission also found:

"Although the access road in its current configuration has a minimum width of 26' adjacent to the pole barn, further erosion from the creek east of the access road could result in a driveway which does not meet minimum standards." See *4/10/09 PC Action Ltr., Attachment A, section 1.1.3.*

FACTS

Schellers own a 1,737 acre ranch adjoining appellant's 100 acre ranch. The Scheller family purchased their lands in 1986 from appellant's predecessor-in-interest, Consuelo King. In her tract map for the land division, Mrs. King created access for the Schellers by dedicating a 75' wide easement over a portion of the 100 acre property that she retained. Appellant later built the subject barn entirely within this dedicated right-of-way. This was after the Schellers purchased their property.

Both parties farm the lands involved. The Schellers have offered to contribute one-half of the cost of removing the barn from the easement.

The parcel line between the El Encinal's (Consuelo King's) Parcel A and Scheller's Parcel B was created by Parcel Map No. 13,549. The map was approved by the County and recorded December 23, 1986, in Book 39, pp. 7, 8 & 9.

The tract map permitted Mrs. King to sell Parcel B to the Schellers. In this same map, Mrs. King dedicated the subject "*75' Private Access Utilities & Water Easement*" for the benefit of the Scheller parcel. This easement runs south from Highway 135 to the cattle guard at the El Encinal/Scheller property line. El Encinal's barn was built after Schellers purchased Parcel B. The entire barn rests within the 75' right-of-way and significantly restricts Scheller's available access. See *MNS Engineers' June 2007 Survey (Attachment A)*, and *four color photographs, (Attachment B)*.

Scheller's remaining access is susceptible to further loss by erosion from flood flows in the "blue line" creek along the eastern perimeter of the roadway. This makes it likely that the existing access road will need to be realigned to the west in the future in

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order to maintain a usable width. It is also likely that the realigned road will need to go through the existing location of the barn. See *Earth Systems Pacific's March 10, 2008 Report*, (**Attachment C**). Moreover, El Encinal's eastern property boundary approximately conforms to the top of the bank on the west side of the creek. This severely restricts Scheller's ability to repair erosion near the barn site.

The recorded tract map for the 1986 Consuelo King land division also provides in part as follows:

"All access roads and driveways serving this project shall conform to Department of Public Works, Roads Division Standards. Roads to be a **minimum of 20 feet in width**, all weather surface capable of supporting a 16 ton fire apparatus." Emphasis added.

Current County Fire Department and other access standards for development are even more exacting. See e.g. SB County Fire Department Dev. Std. #1 (7/1/2006).

Current Santa Barbara County standards also require that private access roads serving two or more residential parcels or dwellings - - **such as currently located on the Scheller and King properties - - must have a minimum width of 24', together with necessary setbacks**. Such access roads also must "not be obstructed in any manner." See Dev. Std. # 1, ¶ II (7/1/2006). Current standards apply to validation proceedings, such as this, for illegal structures. Permitting the barn to remain in its present location would violate this standard as well.

DISCUSSION

1. **The Planning Commission Correctly Determined that Approval of a Permit for a Permanent Structure Within a Tract Map Dedicated Right-of-Way Would Violate County Subdivision Standards.**

The 75' wide easement was created pursuant to the Subdivision Map Act and County Code. Where, as here, a recorded tract map includes dedication of a private access and utility easement, one must follow the tract map modification procedures in order to make any substantial change in the easement. El Encinal has not followed these procedures.

The Subdivision Map Act gives local agencies, such as the County, control over the "design" and "improvement" of subdivisions. Gov't Code § 66411. The term "Design" includes street alignments, grades, widths and traffic access. Gov't Code § 66418. The Map Act defines "improvement" to include land used for "private streets ...

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to ensure consistency with, or implementation of, the general plan or any applicable specific plan." Gov't Code § 66419.

Section 21-1 of Chapter 21 of the Santa Barbara County Code ("Land Division") defines the term "street and road" to include private rights-of-way, such as the El Encinal/Scheller dedicated easement, which can reasonably be expected to serve more than four existing or future building sites under present zoning and subdivision regulations.

Section 21-17 provides for the Board of Supervisors to require such "street improvements ... [and] right-of-way dedication" as appropriate. In this case, the 75' wide access, water and utility easement was found to be appropriate to accommodate such uses and was dedicated on the county-approved final map recorded in 1986.

The actual road width that will ultimately be needed within the 75' right-of-way will be whatever County Roads Division Standards require for approval of a particular use of the Scheller property. As noted above, considerably more than the 20' minimum mentioned on the tract map will be needed **merely to accommodate a principal residence on the Scheller property**, or to allow for creek erosion and other County shoulder and setback requirements. See *MNS Engineers Possible 50' Access Road Section, (Attachment D)*.

In order to reduce the width of the 75' right-of-way, appellant must obtain County approval of a tract map modification. Map modifications are governed by state and local law. A recorded map can be modified if the local agency enacts an authorizing ordinance and makes certain specified findings. Gov't Code § 66472.1. These findings include the following:

- i) That changed circumstances may make the map condition no longer appropriate or necessary;
- ii) That the modifications do not impose an additional burden on the existing fee owners;
- iii) That the modifications do not alter any right, title, or interest in the property shown on the recorded map; and
- iv) That the modified map does not contain any of the grounds for denying a map under Gov't Code § 66474.

The proposed modification must be set for public hearing in accordance with Gov't Code § 66451.3.

Santa Barbara County has adopted such an ordinance governing the modification of recorded maps, such as the tract map involved in this case. These provisions are found in Section 21-15.9 of Chapter 21 of the County Code. Detailed procedures must be followed. Among other things, the application for modification "shall be signed by all parties having any record title interest that may be affected by the requested modification." This means that any application for a modification of the El Encinal/Scheller dedicated easement would have to be signed by both parties. Subsections 21-15.9(d) & (e). The County Code also requires the County to make all of the Government Code findings mentioned above, plus others. Id. at subsection (h).

In sum, the 75' wide easement involved here can only be changed by following the state and County tract map modification procedures outlined above. El Encinal has not submitted any modification application. Even if it did, the application could not be approved because Scheller would not sign it. Moreover, findings ii) and iii) above could not be made in any event.

This 75' wide right-of-way was expressly dedicated in 1986 for use as a "private access, utilities and water easement." The barn occupies more than 2/3 of this area. The Planning Commission therefore correctly determined that an essential finding for issuance of the Land Use Permit could not be made because El Encinal's property is out of compliance with County subdivision standards.

2. Appellant's Arguments Lack Merit.

In its counsel's April 10, 2009 statement in support of this appeal, appellant claims that this case "centers upon an issue of maintaining agricultural viability of an ongoing farming operation versus preserving the Scheller's an opportunity to further subdivide the parcel created by the parcel map...." This is not correct.

This case has nothing to do with agricultural viability. Both parties engage in substantial farming operations and will continue to do so if the barn is relocated to a proper site. The issue here is not whether appellant should have a pole barn, which no one challenges, but whether the existing structure should be relocated so that it does not violate County subdivision standards.

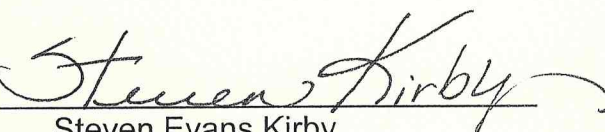
The County should also not get drawn into the merits of any civil dispute between the parties about their rights and obligations concerning use of the easement. The only issue that needs to be decided by the County is whether a Land Use Permit should be issued for the barn in its present location. The Planning Commission correctly determined that it should not be.

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For these reasons, the appeal should be denied and the decision of the Planning Commission upheld.

Respectfully Submitted,

HOLLISTER & BRACE

By 
Steven Evans Kirby

SEK:bew
Enclosures

Copy: John Karamitsos
Florence Trotter-Cadena
Carson Scheller
Tish Beltranena
Susan Petrovich, Esq.

FD DRILL HOLE IN CNC HDWL IN LIEU OF BROKEN CNC ML IN CNC HDWL PER R

S 09°43'49" W 45.01' CFR

FD DRILL HOLE IN CNC HDWL PER R

S 09°43'49" W 10.96' R

75' X 75' WELL EASEMENT PER R1, EXHIBIT "B"

S 09°43'49" W 608.00' R

S 15°40'49" W 431.80' R

S 48°24'49" W 135.90' R

FD 1" IP LS 4786 PER R, DISTURBED, N 43°35'00" E 0.57' FTC

FD 1" IP LS 4786 PER R N 37°12'05" E 0.20' FTC

FD 1" IP LS 4786 PER R N 81°20'59" E 0.20' FTC

FD 1" IP LS 4786 PER R N 18°44'17" E 0.10' FTC

AN EASEMENT FOR INGRESS AND EGRESS FOR PUBLIC UTILITIES AND WATER LINE PURPOSES OVER PARCEL "A" OF PARCEL MAP 13,549.

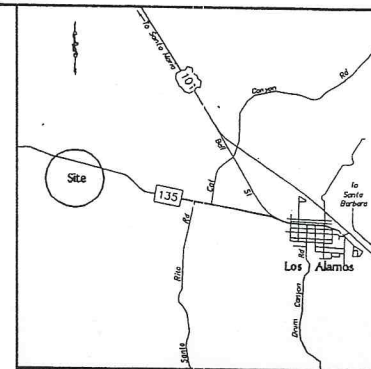
ENCINAL
PARCEL "A" PER R
PARCEL ONE PER R1, EXHIBIT "A"
APN 099-030-040

- LEGEND:
- AC = ASPHALT
 - BWF = BARBED WIRE FENCE
 - CFR = CALCULATED FROM RECORD
 - CGRD = CATTLE GUARD
 - CNC = CONCRETE
 - DBL = DOUBLE
 - DEC = DECIDUOUS TREE
 - ECP = ELECTRICAL CONTROL PANEL
 - EUC = EUCALYPTUS
 - FD = FOUND
 - FTC = FROM TRUE CORNER
 - HDWL = HEADWALL
 - IP = IRON PIPE
 - MBX = MAIL BOX
 - MTL = METAL
 - NL = NAIL
 - OHW = OVERHEAD WIRE(S)
 - PP = POWER POLE
 - R = RECORD PER BOOK 39, PARCEL MAPS, PAGES 7-9
 - R1 = RECORD PER INSTRUMENT No. 1986-087274, OFFICIAL RECORDS
 - ST = STREET
 - STM = STONE
 - W = WITH
 - WF = WOODEN FENCE
 - WP = WOODEN POST
 - WRF = WIRE FENCE
 - = NO MONUMENT FOUND OR SET
 - ⊙ = FOUND MONUMENT AS NOTED
 - = ASPHALT
 - ▭ = HEDGE

GRAPHIC SCALE



(IN FEET)
1 inch = 100 ft.



VICINITY MAP
Not to Scale

Scheller
PARCEL "B" PER R
PARCEL TWO PER R1, EXHIBIT "A"
APN 099-030-041

EXHIBIT MAP
of a portion of
APN 099-030-040
3360 Highway 135
Los Alamos, California
Prepared at the Request of
El Encinal Ranch

* June 2007 *



WINS
Quality Infrastructure Services
1300011-020 • 1300011-020
1300011-020 • 1300011-020

Jun 04, 2007 - 10:22am C:\30-000000-Server\30000011-King\30000011\Draw\30000011_Enhibit_Map.dwg











March 10, 2008

FILE NO.: SL-15629-SA

Mr. Carson Scheller
P.O. Box 498
Los Alamos, CA 93440

PROJECT: SCHELLER PROPERTY ACCESS ROAD
3380 HIGHWAY 135
LOS ALAMOS, CALIFORNIA

SUBJECT: Geotechnical Opinion Concerning the Creek Bank Adjacent to the Access Road

Dear Mr. Scheller:

As requested, this letter presents our opinion concerning the creek bank adjacent to the access road that provides the only ingress and egress to your property at 3380 Highway 135 in the Los Alamos area of Santa Barbara County, California.

On February 28, 2008, representatives of this firm visited the site to observe the general conditions near the access road where it trends between a barn and an ephemeral creek. The access road is on the south side of Highway 135 and is generally aligned in a north-south direction, with the barn on the west side and the creek on the east side. There is currently an approximate 24-foot width to accommodate the access road between the barn and the top edge of the creek bank, as shown in the attached Creek Cross Section.

The creek bank is steep, with an estimated inclination of 0.4-horizontal to 1-vertical. The creek bank has a moderate growth of brush, weeds, various other types of vegetation, and occasional large eucalyptus trees, as well as some debris. The creek bank conditions are shown in Photograph 1, attached. The creek bank comprises silty sand and sandy silt alluvial soils that possess a relatively high potential for localized areas of erosion and periodic surficial failure. During the site visit, we observed localized areas of recent erosion and surficial failure, as shown



on Photograph 2. The majority of the surficial failures are due to erosion undermining the toe of the creek bank.

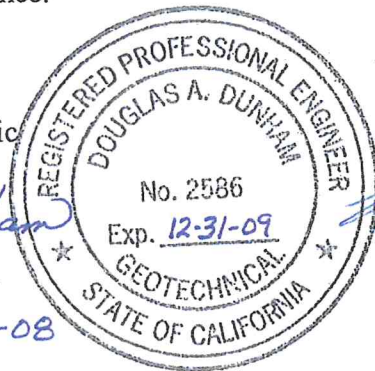
It is our opinion that the access road's current width has a potential to be significantly reduced due to long term and short term erosion. A short term erosion event would occur if the creek flow became blocked as a result of a gross failure in the bank, or in the event of a fallen tree deflecting the thread of the creek toward the barn. It is likely that the access road will need to be realigned to the west in the future to maintain a usable width. This realignment will likely be through the existing barn.

If there are any questions concerning this letter or we can be of further assistance, please contact me at your convenience.

Sincerely,
Earth Systems Pacific

Doug Dunham
Doug Dunham, G.E.

Date Signed: *3-10-08*



Richard Gorman
Richard Gorman, P.G., C.E.G.

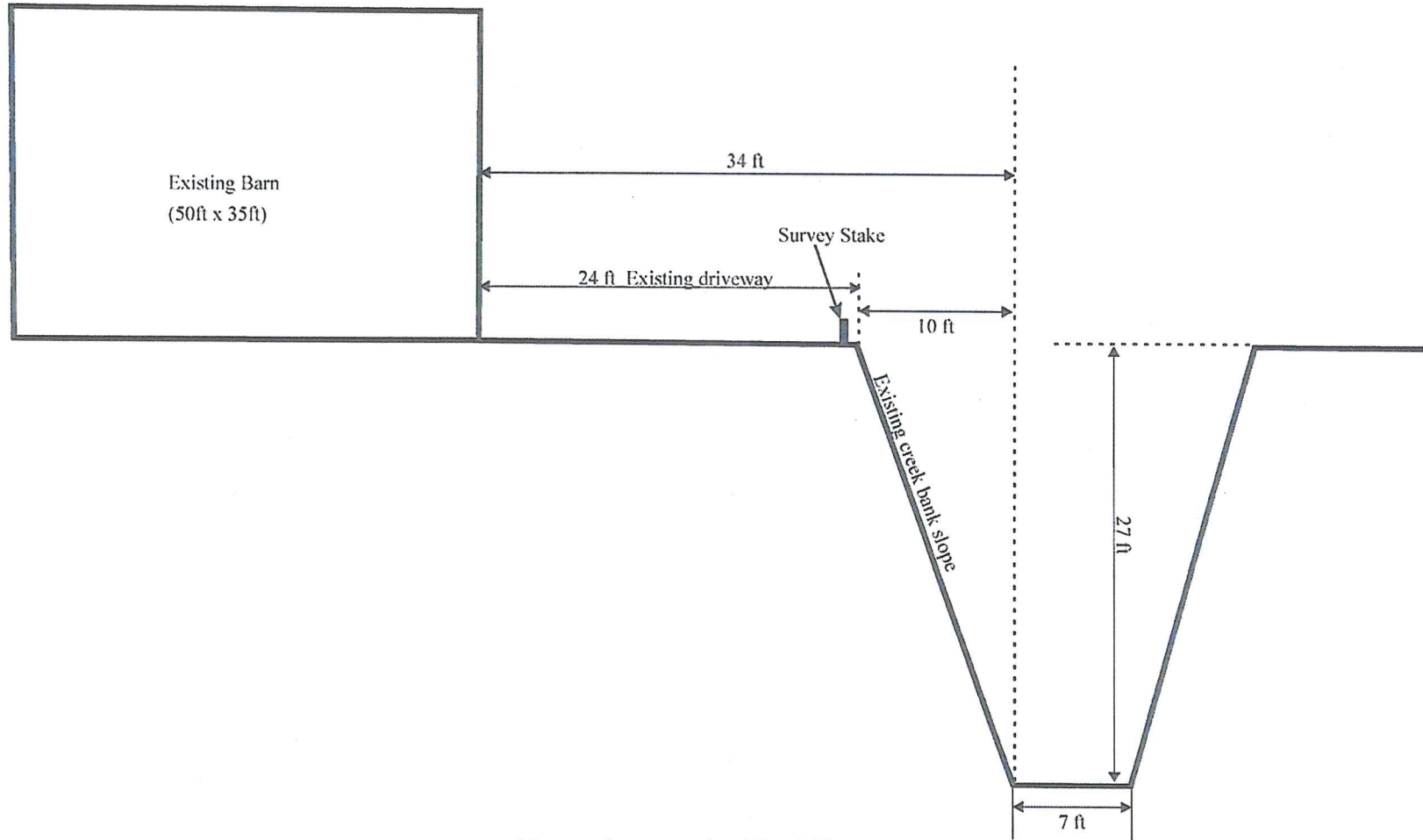
Date Signed: *3-10-08*



Attachments: Creek Cross Section
Photograph 1
Photograph 2

Doc. No.: 0803-075.LTR/ab

CREEK CROSS SECTION
SHELLER PROPERTY ACCESS ROAD
3380 Highway 135
Los Alamos, Santa Barbara County, California



(Approximate scale: 1" = 10')
(View looking north)



EARTH SYSTEMS PACIFIC

4378 Old Santa Fe Road, San Luis Obispo, CA 93401
February 2008

(805) 544-3276 - (805) 544-1786

www.earthsys.com - email: esc@earthsys.com
SL-15629-SA

PHOTOGRAPH 1
SCHELLER PROPERTY ACCESS ROAD
3380 Highway 135
Los Alamos, Santa Barbara County, California



EARTH SYSTEMS PACIFIC

4378 Old Santa Fe Road, San Luis Obispo, CA 93401
February 2008

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SL-15629--SA

PHOTOGRAPH 2
SCHELLER PROPERTY ACCESS ROAD
3380 Highway 135
Los Alamos, Santa Barbara County, California

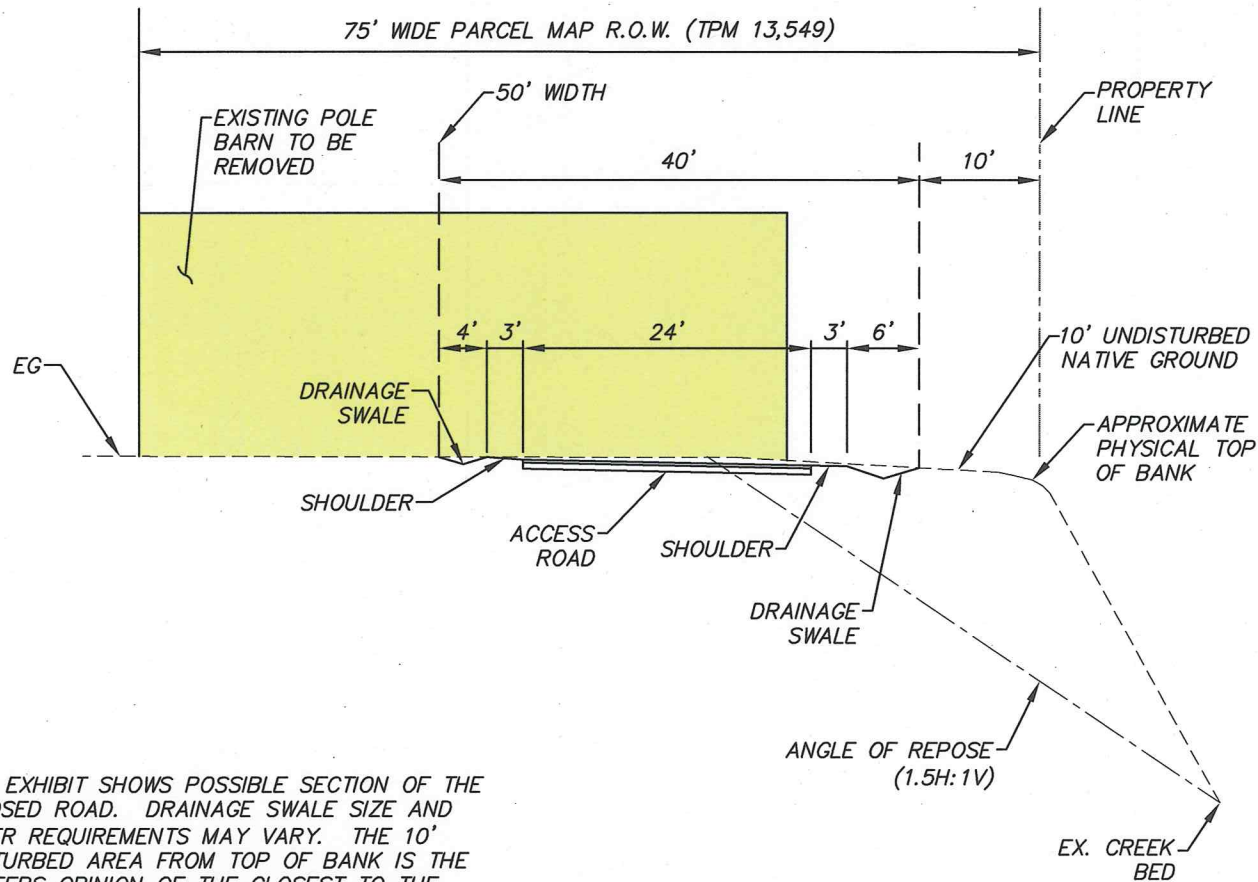


EARTH SYSTEMS PACIFIC

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NOTE: EXHIBIT SHOWS POSSIBLE SECTION OF THE PROPOSED ROAD. DRAINAGE SWALE SIZE AND NUMBER REQUIREMENTS MAY VARY. THE 10' UNDISTURBED AREA FROM TOP OF BANK IS THE ENGINEERS OPINION OF THE CLOSEST TO THE TOP OF BANK DESIRED FOR CONSTRUCTION FOR ENVIRONMENTAL PURPOSES AS WELL AS SLOPE PROTECTION AND ACCESS ROAD LONGEVITY.

SCALE:
1" = 10'

SHELLER RANCH
3360 HIGHWAY 135, LOS ALAMOS, CALIFORNIA
POSSIBLE 50' ACCESS ROAD SECTION
APN-099-030-040

WORK ORDER NO.
12688
SHEET 1
OF 1 SHEETS